

Sr. No. Date of order/proceedings

1

2

Order or other proceedings with signature of Judge or Magistrate

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 552/2014

Date of Institution ... 14.04.2014

Date of Decision ... 19.03.2018

Habib Ur Rehman son of Khanadan resident of Baghica, Safaid Sang, Peshawar.

Appellant

1. District & Session Judge Peshawar.
2. Senior Civil Judge Peshawar.

Respondents

19.03.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for the appellant present. Learned Deputy District Attorney for the respondents present.

2. The appellant (Ex-Chowkidar District Courts Peshawar) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 12.03.2014 whereby he was compulsory retired from service on the ground of absence from duty w.e.f 03.08.2013 to 13.08.2013 and against the order dated 11.04.2014 whereby departmental appeal of the appellant against the original order dated 12.03.2014 was dismissed.

3. Learned Counsel for the appellant while assailing the impugned orders argued that the appellant remained absent from duty only for a few days for the reasons beyond his control. Further argued that the appellant could not attend to his duties due to army operation against miscreants in the FATA and its suburbs as no one

19/3/18

was allowed/able to come out from their houses for performing duties. Further argued that the impugned punishment is excessive and harsh and the appellant does not deserve the same.

4. As against that Learned Deputy District Attorney resisted the present appeal and argued that the appellant remained willfully absent from his duties without any permission. Further argued that the impugned orders were issued after adhering to all the legal requirements and as such do not deserve any interference.

5. Arguments heard. File perused.

6. From perusal of letter for explanation dated 19.08.2013, Show Cause Notice dated 07.09.2013 and original impugned order dated 12.03.2014 it is evident that the appellant was awarded punishment of compulsory retirement on the ground that he remained absent from duty for a period of 11 days i.e w.e.f 03.08.2013 to 13.08.2013. On the other hand the appellant in his reply to letter for explanation, reply to Show Cause Notice, Departmental Appeal and in the present service appeal has taken the stance that the appellant could not attend to his duties due to army operation in FATA and suburbs and which fact is an open secret. In this backdrop particularly keeping in view the absence period, the punishment of compulsory retirement appears to be excessive and harsh.

7. Consequently the present appeal is accepted in terms that the major punishment of compulsory retirement from service is modified and converted to withholding of three (03) annual increments for a period of three (03) years. Absence period and

11
aw.n

intervening period shall be treated as extraordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

19.03.2018



(MUHAMMAD AMIN KUNDI)
MEMBER



(MUHAMMAD HAMID MUGHAL)
MEMBER

19.03.2018 Learned counsel for the appellant present. Mr. Zia Ullah, learned Deputy District Attorney for the respondents present. Vide separate judgment of today of this Tribunal placed on file, the present appeal is accepted in terms that the major punishment of compulsory retirement from service is modified and converted to withholding of three (03) annual increments for a period of three (03) years. Absence period and intervening period shall be treated as extraordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Amin Kundi)
MEMBER



(Muhammad Hamid Mughal)
MEMBER

25.10.2017


Clerk of counsel for the appellant and Mr. Usman Ghani, DA for the respondents present. Request made for adjournment on behalf of learned counsel for the appellant. Granted. To come up for arguments on 05.01.2018 before the D.B.



Member


Chairman

05.01.2018


Clerk to counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondents present. Clerk to counsel for the appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 06.03.2018 before D.B.



(Ahmad Hassan)
Member(E)


(M. Amin Khan Kundi)
Member (J)

06.03.2018

Learned counsel for the appellant Mr. Zia Ullah, Learned Deputy District Attorney for the respondents present. Arguments heard. To come up for order on 19.03.2018 before D.B



(Muhammad Amin Kundi)
Member

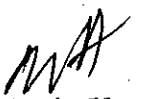

(Muhammad Hamid Mughal)
Member


552/14

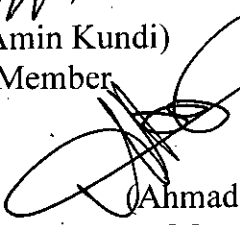
16.08.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Asstt. A.G for the respondents present. Arguments on the point of jurisdiction heard. To come up for order tomorrow on 17.08.2017 before the Larger Bench.


Chairman


(M. Amin Kundi)
Member

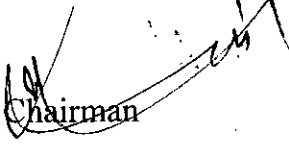

(M. Hamid Mughal)
Member



(Ahmad Hassan)
Member

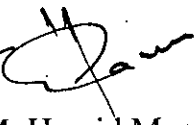
17.08.2017

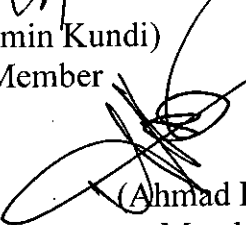
Counsel for the appellant and Mr. Kabeerullah Khattak, Asstt. A.G for the respondents present. Arguments on the point of jurisdiction heard and record perused.

Vide our detailed judgment of today, in connected service appeal No. 41/2016, entitled "Zubair Ahmad Vs. the Appellate Judge through Registrar, Peshawar High Court, Peshawar etc." this Tribunal has the jurisdiction to entertain the appeal. To come up for arguments before D.B on 25.10.2017.


Chairman

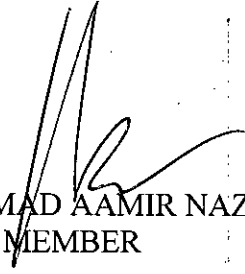

(M. Amin Kundi)
Member


(M. Hamid Mughal)
Member


(Ahmad Hassan)
Member

10.01.2017

Appellant with counsel and Additional AG for respondents present. Since learned counsel for appellants are not available today in other similar cases, therefore, this appeal is also adjourned for final hearing to 11.05.2017 before the Larger Bench.


(MUHAMMAD AAMIR NAZIR)
MEMBER



(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN


(ASHFAQUE TAJ)
MEMBER

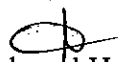

(AHMAD HASSAN)
MEMBER

11.05.2017

Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Due to incomplete larger bench the case is adjourned. To come up for arguments on 16:08:2017 before Larger Bench.


(M.Amin Khan Kundi)
Member


(Gul Zeb Khan)
Member


(Ahmad Hassan)
Member

28.10.2016

Appellant in person present and moved an application for early hearing. Case file requisitioned. Application allowed. To come up for arguments on 14.12.2016 instead of 24.01.2017 before D.B. Notices be issued to parties.


(MUHAMMAD AAMIR NAZIR)
Member

14.12.2016

Appellant in person and Addl. AG for respondents present. Arguments could not be heard due to non-availability of learned Member Executive. Adjourned for final hearing before the larger bench on 10.01.2017.


(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN


(MUHAMMAD AAMIR NAZIR)
MEMBER


(ASHFAQUE TAJ)
MEMBER

13.01.2016

Appellant in person and Addl: A.G for respondents present. Since the learned Member (Judicial) is on leave therefore, case is adjourned to 16.5-16 for the same.


Reader

16.05.2016

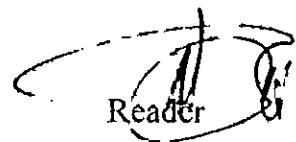
Appellant with counsel and Mr. Usman Ghari. Sr.GP for respondents present. From perusal of the file it transpired, that once in the past the appellant has also been proceeded against as per the order of the appellate court, the same record is not available on file, hence be requisition. Representative of the respondents also be summoned in person alongwith relevant record on the next date. To come up for such record and further arguments on 03.10.2016.


Member


Member


03.10.2016

Since 3rd October, 2016 has been declared as public holiday on account of 1st Muharram therefore, case is adjourned for the same on 24-1-17.


Reader

27.03.2015

Appellant in person and Mr. Mukarram Shah, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended. Adjourned to 31.3.2015 for submission of written reply before S.B.


Chairman

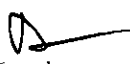
31.03.2015

Appellant in person and Mr. Murtaza Ali Shah, COC for respondents alongwith Addl: A.G present. Separate written statements by respondents No. 1 and 2 submitted. The appeal is assigned to D.B for rejoinder and final hearing for 14.10.2015.


Chairman

14.10.2015

Appellant in person and Mr. Ziaullah, GP for respondents present. Appellant requested for adjournment. To come up for arguments on 13-1-16.


Member


Member

24.10.2014

Appellant present in person. Respondents are absent. However, Mr. Muhammad Adeel Butt, AAG is present and stated that he has not yet received authorization for defending the case on behalf of the respondents. Another chance is given to the learned AAG for securing authorization and for submission of written reply/comments on behalf of the respondents on 11.02.2015.


Chairman

11.02.2015

Appellant in person and Addl: A.G for respondents present. Requested for adjournment. Last opportunity granted for written reply. Adjourned to 12.03.2015 before S.B.


Chairman

12.03.2015

Appellant in person and Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity is extended. To come up for written reply on 27.3.2015 before S.B.


Chairman

Appeal No. 552/2014
Mr. Habib-ur-Rehman.

3. 29.05.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 12.03.2014, he filed departmental appeal on 17.03.2014, which has been rejected on 11.04.2014, hence the present appeal on 14.04.2014. He further contended that the impugned order dated 11.04.2014, has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. 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 26.08.2014.

Appellant Deposited
Security & Process Fee
Rs. 1600/- Bank
Receipt is Attached with File.




Member

4. 29.05.2014

This case be put before the Final Bench I for further proceedings.


Chairman

26.8.2014

Appellant with counsel present. Respondents are not present despite their service through concerned officials. However, Mr. Muhammad Adeel Butt, Additional Advocate General is present and would be contacting the respondents for authorization to defend case on their behalf as well as written reply/comments on 24.10.2014.


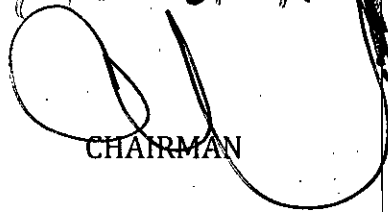

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 552/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/04/2014	<p>The appeal of Mr. Habib-ur-Rehman resubmitted today by Mr. Javed Iqbal Gulbela 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	21-4-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>29-5-2014</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>

The appeal of Mr. Habib-ur-Rehman son of Khanadan received today i.e. on 14.04.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Law under which appeal is filed is not mentioned.
- 2- Copy of Impugned order dated 12.03.2014 mentioned in para-5 of the memo of appeal (Annexure-C) is not attached with the appeal which may be placed on it.

No. 608 /S.T,

Dt. 15/04 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Javed Iqbal Gulbela Adv.Pesh.

*Response is
remitted after necessary
completion.
2/16/4/14*

IN THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR

Appeal no. 552/2014.

Habib Ur Rehan

Vs

District & Session Judge Peshawar & others

I N D E X

S#	Description of Documents	Annexure	Page#
1.	Grounds of Appeal & Affidavit		1 to 3
2.	Addresses of Parties		3A
3.	Copies of Explanation No.717 Dated 19-08-2013 <i>f relevant record</i>	"A,B,B1,B2,"	4 to 7
4.	Copies of Impugned Judgment & Order dated 12-03-2014	"C"	8
5.	Copies of officer Order dated 12-03-2014	"D"	9 to 10
6.	Copies of appeal & order dated 11-04-2014, <i>other documents</i>	"E"	11 to 12
7.	Wakalat Nama		13

Appellant

Through


(JAVED IQBAL GULBELA)

Advocate High Court Peshawar

DATED 14-04-2014

(U)

IN THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Habib Ur Rehan S/o Khanadan R/o Baghica, Safaid Sang, Peshawar

Appeal no. 552/14

Appellant

VERSUS

1. District and Session Judge Peshawar
2. Senior Civil Judge Peshawar

Respondents

560
14-4-2014

Sec-4 of Service Tribunal Act-1974

APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER DATED THE 11-04-2014 OF THE LEARNED DISTRICT AND SESSION JUDGE PESHAWAR, WHEREBY, THE DEPARTMENTAL APPEAL AGAINST THE IMPUGNED JUDGMENT DATED 12-03-214 OF THE LEARNED SENIOR CIVIL JUDGE PESHAWAR, WHEREBY THE APPELLANT WAS COMPULSORY RETIRED ON ALLEGED LEAVE WITHOUT PRIOR PROPER APPROVAL WAS DISMISSED IN A CLASSICALLY CURSORY MANNER.

RESPECTFULLY SHEWETH,

1. That the appellant has been a class-IV employee in the capacity of been a chokidar, in the District Courts Peshawar.
2. That the appellant was served an explanation No. 717 of Dated 19-08-2013 issued from the office of learned Senior Civil Judge Peshawar (Copy is annexed here as Ann "A").
3. That it was called upon the appellant that due explanation be furnished for the alleged leave without proper approval. It was vide the same explanation notification that the inquiry in case of the appellant was dispensed off, but at the same time was asked to submit reply.
4. That proper reply was submitted and quit cogent and solid reasons were detailed therein, but even then the same was turned down vide the impugned judgment and order dated 12-03-2014 (Copy of the reply and impugned Order Dated 12-03-2014 are annexed here with as Ann-"B & C" respectively).
5. That at last office order No. 8(DAS) 2369-71 Dated 12-03-2014 was communicated to the appellant whereby the appellant was compulsory retired from service (copy is annexed here with as Ann "C").

re-submitted to the
and filed;

14/4/14

(2)

6. That feeling aggrieved the appellant preferred a departmental representation for cancelation and setting aside the impugned office order dated# 13/03/2014 as well as dated 12-03-2014 to the Learned District And Session Judge Peshawar, but that was turned down vide the impugned judgment and order 11-04-2014 (Copies of the appeal and order dated 11-04-2014 annexed here as Ann-"D & E", respectively)
7. That feeling aggrieved the appellant prefers the instant appeal for setting aside the impugned judgment and order dated 11-04-2014 upon the following grounds inter alia:-

GROUND:-

- A. That the impugned order of compulsory retirement is wrong, illegal and against the well established norms and principals governing up the subject.
- B. That the impugned order dated 11-04-2014 is against principles of natural justice as has been condemned un heard without affording any opportunity of being heard in person.
- C. That compulsory retirement is a Major penalty which cannot be imposed without properly evaluating the allegations by deeply scrutinizing the same.
- D. That no proper inquiry or rather no inquiry at all was conducted and even then the appellant was deprived of his fundament right.
- E. That operation against the miscreants in the FATA and its suburbs is an open secret and the reasons as furnished by the appellant for the period of ten day i-e. 03-08-2013 to 13-08-2013 is quite reasonable and based on true facts.
- F. That besides the above, imposing of Major penalty on alleged ten days absent is also not reasonable or just.
- G. That from all four corners of law, the impugned order of compulsory retirement as well as the learned appellant authority are wrong, unwarranted and are illegal and are liable to be cancelled.
- H. That any other grounds not raised here may graciously be allowed at the time of arguments.

(3)

IT IS, THEREFORE, MOST HUMBL Y PRAYED THAT ON ACCEPTANCE OF THE INSTANT APPEAL THE OFFICE ORDER # 8(DAS) 2369-71 DATED 12-03-2014 OF THE OFFICE OF THE LEARNED SENIOR CIVIL JUDGE PESHAWAR AND IMPUGNED JUDGMENT AND ORDER DATED 11-04-2014 OF THE DEPARTMENTAL AUTHORITY I.E. RESPONDENT NO.1 MAY GRACIOUSLY BE CANCELLED AND SET ASIDE AND THE APPLICANT BE RESTORED INTO SERVICE WITH ALL BACK BENEFITS.

صیب الحقی

Appellant

Through

(JAVED IQBAL GULBELA)

Advocate High Court Peshawar

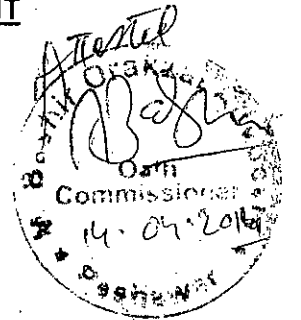
DATED 14-04-2014

AFFIDAVIT

Declared on oath that contents of the instant appeal are true & correct to the best of my knowledge and belief and nothing is concealed.

صیب الحقی

DEPONENT



3A

IN THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Habib Ur Rehan

Vs

District & Session Judge Peshawar & others

ADDRESSES OF PARTIES

ADDRESS OF APPELLANT


Habib Ur Rehan S/o Khanadan R/o Baghica, Safaid Sang, Peshawar

ADDRESSES OF RESPONDENTS

1. District and Session Judge Peshawar
2. Senior Civil Judge Peshawar

Appellant

Through


(JAVED IQBAL GULBELA)

Advocate High Court Peshawar

DATED 14-04-2014

Ann-P

Office of the Senior Civil Judge, Peshawar.

No. 71.7. SCJ Dated Peshawar the 19/8/2013.

EXPLANATION

I, Javaid -ur- Rehman, Senior Civil Judge, Peshawar, as competent authority, under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 (amended) do hereby serve you Habib -ur- Rehman, Chowkidar as follows:

1. As per report of Incharge Chowkidars/Sweepers, New Judicial Complex Peshawar, you remained absent from duty from 03.08.2013 to 13.08.2013 without prior approval of leave by the competent authority.
2. As a result thereof, I, as competent authority, have tentatively decided to dispense with the inquiry under Rule 5(b)(ii) of the said rules 4(b)(iii) of the rules ibid.
3. You are therefore, required to furnish reply to this notice within seven days.
4. If no reply to this notice received within seven days of its delivery, it shall be presumed that you have no defence to put in, and in that case, an ex-parte action i.e. removal from service shall be taken against you.
5. Intimate whether you desire to be heard in person.

[Handwritten signature]

JAVAH -UR- REHMAN
Senior Civil Judge,
Peshawar.

Senior Civil Judge
Peshawar.

JAVED IZHAL GULBELA
Advocate High Court, Peshawar
& Federal Shariat Court of Pakistan

A
4
12
Disty

To

The Senior Civil Judge,
Peshawar.

(5)

Am-B

Subject:- REPLY TO NOTICE NO.717 DATED 19.8.2013

Respectfully stated as under that I, Habib ur Rehman Chowkidar received the captioned notice on 19.8.2013.

submitted to court
i.e. 04.9.13
S.M.

1. That the reply to petitioner, that he has not remained wilful absence from duty w.e.f 03.8.2013 to 13.08.2013.
2. That the replying petitioner has not been committed intentionally any act permission specified in R.No.3 (d) on the said rules.
3. That the period of absence was beyond the control of the petitioner.
4. That it is an admitted fact that you have every authority under the mentioned rules in the notice.

EXPLANATION

There as Army operation in Mullegori area Khyber Agency Adjacent to our area and due to the reason no one was allowed/able to come out from their houses for performance their official duties. The situation was beyond the control of the petitioner.

The petitioner was not willfully absented himself and was beyond the control of the petitioner.

The petitioner was not willfully absented himself and was prevented from his official duties due to adverse situation in the area concerned. In those days the mobile services were not active and working condition. Furthermore the petitioner has fifteen years unblemished services in his credit.

It is, therefore, requested that in the light of the above the petitioner may kindly be exonerated of the charges levelled against him in the notice and the petitioner will be remained careful in future.

Yours obediently

Dated:-24.8.2013.

(HABIB UR REHMAN CHOWKIDAR)
SESSIONS COURT PESHAWAR.

JAVED IQBAL SULBELA
Advocate High Court, Peshawar
& Federal Shariat Court of Pakistan

RECORDED
12/2/13
Distt Court Peshawar

(6) Am- 8/12

SHOW CAUSE NOTICE

I, JAVOID-UR-REHMAN, SENIOR CIVIL JUDGE PESHAWAR, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. HABIB-UR-REHMAN, CHOWKIDAR, as follows:

1. You were found absent from your duty on 03.08.2013 to 13.08.2013, as Chowkidar on the entrance of New Judicial Complex, Peshawar, without any information, application & permission.

I am satisfied that you have committed the above mentioned act/omission as specified in rule 3 of the said rules.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of removal from the service under rule 4 of 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 of its delivery, 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.

Dated: 7.9.13

(JAVOID-UR-REHMAN)
Senior Civil Judge, Peshawar
Competent Authority

JAVED IQBAL GULBELA
Associate High Court, Peshawar
& Federal Shariat Court of Pakistan

ATTESTED
Dist. Court Peshawar

(7) Ann-B/2

P. on file

Ses Pesh
10-09-13

BEFORE THE HONOURABLE SENIOR CIVIL JUDGE, PESHAWAR

REPLY TO NOTICE DATED 07-09-2013

Respectfully stated as under that I Habib Ur Rehman Chowkidar received title captioned notice on 07/09/2013.

1. That it is submitted that I did not not remained willful absent from duty w.e.f. 03/08/2013 to 13/08/2013.
2. That with due respect I have not committed intentionally / omission any act permission specified in R. No. 3 of the said rules.
3. That the period of absentia was beyond the control of the petitioner.
4. That it is an admitted fact that your Honour has every authority under the mentioned rules in the notice.

Explanation:-

There was army operation in Mullagori area Khyber Agency adjacent to our area and due to this reason no one was allowed/able to come out from their houses for performing their official duties, the situation was beyond the control of the petitioner.

That petitioner was not willfully absenied himself and was prevented from his official duties due to adverse situation in the area concerned. In those days the mobile service were not active and working condition. Further more the petitioner has fifteen year unblemished in his career and 3 minor children and a wife who are totally depended upon me.

It is therefore, requested that in the light of the above the petitioner may kindly be pardon and exonerate of the charges leveled against him in the notice and the petitioner will be remained careful in future.

JAVED IQBAL GULZELA
Advocate High Court, Peshawar
& Federal Shariat Court of Pakistan.

ATTESTED
Distt. Court Peshawar

Obediently

Habib Ur Rehman

Chowkidar,

Judicial Comptroller


OFFICE OF THE SENIOR CIVIL JUDGE, PESHAWAR

OFFICE ORDER

WHEREAS, as per report of Mr. Muhammad Iqbal, Incharge Chowkidars, Judicial Complex, Peshawar; Mr. Habib-ur-Rehman, Chowkidar remained absent from duty without prior approval of authority from 03/08/2013 to 13/08/2013.

AND WHEREAS, the delinquent official was served with a notice under Rule-4 of the KPK Government Servants (Efficiency & Discipline Rules) - 2011 to show cause, in writing or in person, as to why the major penalty of removal from service should not be imposed upon him. The said official was also afforded with the opportunity of personal hearing but was found unsatisfactory.


NOW, THEREFORE, I, as Competent Authority, hereby order to the compulsory retirement of the delinquent official Mr. Habib-ur-Rehman, Chowkidar under Rule 4(b)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.


(SHAH WALIULLAH HAMID)
Senior Civil Judge,
Peshawar.

2369-7/
Enrolment No. 83(DAS) _____ Dated Peshawar the 12/3/2014

Copy forwarded for information/necessary action to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. The Clerk of Court, District Courts, Peshawar
3. Official concerned by name.


Senior Civil Judge,
Peshawar.


JAVED IQBAL GULBELA
Advocate High Courts, Peshawar
& Federal Shariat Court of Pakistan

To,

11/04/12
7
20/19
To, THE HON'BLE DISTRICT AND SESSION JUDGE PESHAWAR



Subject:-

DEPARTMENTAL REPRESENTATION AGAINST THE IMPUGNED ORDER DATED THE 12-03-2014 OF THE LEARNED SENIOR CIVIL JUDGE PESHAWAR, WHEREBY THE APPELLANT WAS COMPULSORY RETIRED ON ALLEGED LEAVE WITHOUT PRIOR PROPER APPROVAL.

HON'BLE SIR,

WITH REFERENCE TO OFFICE ORDER NO. 8(DAS) 2369-71 DATED 12-03-2014 OF THE HON'BLE SENIOR CIVIL JUDGE PESHAWAR, THE UNDERSIGNED HUMBLY SUBMITS THE FOLLOWING:-

1. That the undersigned has been a class-IV employee in the capacity of been a chokidar, in the district courts Peshawar.
2. That the undersigned was served an explanation No. 717 of Dated 19-08-2013 issued from the office of learned Senior Civil Judge Peshawar (Copy is annexed here with).
3. That it was called upon the undersigned that due explanation be furnished for the alleged leave without proper approval. It was vide the same explanation notification that the inquiry in case of the Undersigned was dispensed off, but at the same time was asked to submit reply.
4. That proper reply was submitted and quit cogent and solid reasons are detailed therein, but even then the same was turned down vide that impugned judgment and order dated 10-03-2014 (Copy of the reply and impugned is here with).
5. That at last office order No. 8(DAS) 2369-71 Dated 12-03-2014 was communicated to the Undersigned whereby the undersigned was compulsory retired from service (copy is annexed here with).
6. That feeling aggrieved the Undersigned prefers the instant departmental representative for cancelation and setting aside the impugned office order dated 12/03/2014 as well as dated 10/03/2014 upon grounds inter alia:-

GROUND:-

- A. That the impugned order of compulsory retirement is wrong, illegal and against the well established norms and principals governing up the subject.

ATTESTED

(Examination)

Sessions Judge, Peshawar

(10)

- B. That the impugned order dated 12-03-2014 is against principles of natural justice as has been condemned un heard without affording any opportunity of being heard in person.
- C. That compulsory retirement is a Major penalty which cannot be imposed without properly evaluating the allegations by deeply scrutinizing the same.
- D. That no proper inquiry or rather no inquiry at all was conducted and even then the Undersigned was deprived of his fundament right.
- E. That operation against the miscreants in the FATA and its suburbs is an open secret and the reasons as furnished by the undersigned for the period of ten day i-e. 03-08-2013 to 13-08-2013 is quite reasonable and based on true facts.
- F. That besides the above, imposing of Major penalty on alleged ten days absent is also not reasonable or just.
- G. That from all four corners of law, the office order of compulsory retirement is wrong, unwarranted and is illegal and is liable to be cancelled.

It is, therefore, most humbly prayed that on acceptance of the instant Departmental Representation the office order # 8(DAS) 2369-71 Dated 12-03-2014 of the office of the learned Senior Civil Judge Peshawar may graciously be cancelled and set aside and the applicant be restored into service with all back benefits.

Habib ur Rehman

HABIB UR REHMAN

(Ex-Chokidar, District Courts Peshawar)

Dated 17-03-214

ATTESTED

[Signature]
(Examiner)

Sessions Court Peshawar

Affidavit:

Declared on oath that contents of the instant departmental appeal are true & correct to the best of my knowledge & belief & nothing is concealed.
Deposited

(11) Ann-E
2

OFFICE OF THE DISTRICT & SESSIONS JUDGE, PESHAWAR

ORDER

This is aimed to dispose of Departmental Appeal preferred by Mr. Habib-ur-Rehman, (the then Chowkidar) impugning the Order dated 12/03/2014 of learned Senior Civil Judge, Peshawar; whereby the Appellant was compulsorily retired on the score of absence without approval of leave.

Brief facts are such that appellant was found absent from duty with effect from 03/08/2013 to 13/08/2013 without any information, application and permission. Consequently, show cause notice was served upon him attracting the jurisdiction conferred upon the Competent Authority under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011. Appellant responded therein that he was prevented to attend duty for the reason of law and order situation in area where he is residing. The reasons assigned were discarded and he was provided personal hearing. Proceedings were culminated into imposition of penalty of compulsory retirement upon the appellant. This obliged him to file instant appeal which is under consideration.

Comments of the Senior Civil Judge, Peshawar being Competent Authority were invited vide letter# 87(PTS)2000 dated 20/03/2014; the same have been placed on file vide letter# 2487/SCJ dated 04/04/2014.

Appeal is grounded that the impugned order is wrong, unlawful and against the principles of natural justice. He added that the penalty so imposed is severe in nature which was not warranted in the circumstances.

ATTESTED

dv
(Examiner)
Sessions Court Peshawar

(12)

Competent Authority responded in comments that appellant was dealt with in accordance with law and he was given full opportunity as well as evidence in his defense. It was specifically pleaded that the applicant is a habitual absentee and it was not the first time of his absence but he used to do so in past and has been served with so many explanations and warnings. He was once removed from service vide Order dated 21/02/2012 and was reinstated by the appellate authority on humanitarian grounds.

Objective perusal of case file reveals that the appellant was time and again told to mend his ways and attitude but he ignored all such directions. His attitude is not becoming of a watchman/Chowkidar as reflected from his service record. Moreover, no material irregularity or illegality is found in the proceedings conducted by the Senior Civil Judge, Peshawar which were logically concluded in terms of compulsory retirement.

For the foregoing reasons, the appeal at hand being devoid of merits is dismissed.

— Sd —

(SHAIBER KHAN)
District & Sessions Judge,
Peshawar.

Endorsement No. 83(DAS) 2(07-08) Dated Peshawar the 11/04/2014

Copy forwarded for information/necessary action to:

1. The Senior Civil Judge, Peshawar.
2. The Clerk of Court, District Courts, Peshawar.
3. Official concerned by name.

CERTIFIED TO BE TRUE COPY

(Examined)
Copying Agency Sessions Court
Peshawar.

District & Sessions Judge,
Peshawar

کالت نظامہ

بغداد: سرور
 نام: محمد علی محمد علی
 دعویٰ یا جرم: مخائب
 ایف آئی آر: S-A
 تاریخ: 5

مخائب
 محمد علی محمد علی

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے وسطے پیروی وجود میں
 بمقام۔۔۔۔۔ کیلئے جاوید اقبال گل بیلہ ایڈووکیٹ ہائی کورٹ کو بدیں شرط
 مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بزریہ مختار خاص زور وعدالت حاضر ہوتا ہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل
 صاحب موصوف کو اطلاع دے کر حاضر عدالت کرونگا، اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے
 کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر
 مقام کچھری کی کسی اور جگہ یا کچھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر
 مقدمہ علاوہ صدر مقام کچھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچھری کے اوقات کے آگے پیچھے پیش ہونے پر
 من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی
 صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور
 صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و
 تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل
 کرنے اور ہر قسم کے بیان دینے اور سپرد دہائی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور
 بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا کطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف
 کو بشرط ادائیگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا
 اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ
 مقرر کریں اور ایسے مشیر قانون کے ہر امر وہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل
 ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو
 پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت
 میں امیر اکوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند رہے
 مورخہ۔۔۔۔۔ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

محمد علی محمد علی

محمد علی محمد علی

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Habib-ur-Rehman.....vs..... District & Sessions Judge, Peshawar.

APPLICATION FOR EARLY HEARING.

W.P. Province
Service Tribunal
Diary No. 286
dated 13/4/15

Respectfully,

- 1- That the captioned case is pending before this honorable Tribunal and is fixed for 14.10.2015.
- 2- That the petitioner belongs to a very poor family and early disposal of the instant case is indispensable.
- 3- That there is no legal bar in allowing the instant application.

It, is therefore, humbly prayed that on acceptance of the instant application the caption case may kindly be fixed for early date.

*Record Perused
Appellants removed
from service being
habitual absentee
placed on file.
17/4/2015*

[Signature]
Petitioner/applicant

Through.

(Javed Iqbal Gulbila)
Advocate.

Affidavit

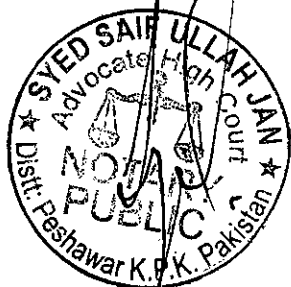
Declared on oath that contents of the instant petition are true and correct and nothing is concealed.

[Signature]

Deponent.

ATTESTED

13 APR 2015



*Be placed before
DB for orders
deemed appropriate
15.04.15*

BEFORE HON'BLE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.

Habib ur Rehman

.... Appellant

Versus

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

.... Respondents

Reply on behalf of Respondent No. 02 in
Appeal No. 552 of 2014

Respectfully submitted as under:

Preliminary Objections

1. That the appellant has no cause of action to file the appeal.
2. That the appellant has not come to this Hon'ble Tribunal with clean hands.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has been estopped by his own conduct to file the appeal.
5. That the appeal is badly time barred.

Facts

1. Para No. 01 is correct.
2. Para No. 02 is correct.
3. Para No. 03 is denied. The inquiry was dispensed with due to wilful absence of the appellant and was asked to explain such absence.
4. Para No. 04 is denied. The reasons forwarded by appellant were neither showing good cause nor sufficient cause of wilful absence and therefore was penalized under the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.
5. Para No. 05 is correct.
6. Para No. 06 is correct.
7. Para No. 07 needs no comments.

Grounds:

- (A) Incorrect. That the impugned Order is according to law & rules.

- (B) Incorrect. Proper procedure adopted by the respondents and after fulfilling the codel formalities, the impugned Order was issued according to law.
- (C) Incorrect as per para mentioned above.
- (D) Incorrect. The appellant admittedly remained wilfully absent from his duty and after fulfilling codel formalities awarded the above punishment.
- (E) Incorrect.
- (F) Incorrect as per para mentioned above.
- (G) Incorrect as per para mentioned above.
- (H) That the respondents seek permission of this Hon'ble Tribunal to advance further grounds during arguments.

In light of the above, it is submitted that the appellant being habitual in violating service discipline is incapable and inefficient has committed misconduct and therefore, the appeal may kindly be dismissed.



**Senior Civil Judge
Peshawar.**

AFFIDAVIT

Declared on oath the contents of the written reply are correct to the best of knowledge and belief



Deponent

BEFORE HON'BLE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.

Habib ur Rehman

.... Appellant

Versus

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

.... Respondents

Reply on behalf of Respondent No. 01 in
Appeal No. 552 of 2014

Respectfully submitted as under:

Preliminary Objections

1. That the appellant has no cause of action to file the appeal.
2. That the appellant has not come to this Hon'ble Tribunal with clean hands.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has been estopped by his own conduct to file the appeal.
5. That the appeal is badly time barred.

Facts

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2. Para No. 02 is correct.
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4. Para No. 04 is denied. The reasons forwarded by appellant were neither showing good cause nor sufficient cause of wilful absence and therefore was penalized under the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.
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6. Para No. 06 is correct.
7. Para No. 07 needs no comments.

Grounds:

- (A) Incorrect. That the impugned Order is according to law & rules.

- (B) Incorrect. Proper procedure adopted by the respondents and after fulfilling the codel formalities, the impugned Order was issued according to law.
- (C) Incorrect as per para mentioned above.
- (D) Incorrect. The appellant admittedly remained wilfully absent from his duty and after fulfilling codel formalities awarded the above punishment.
- (E) Incorrect.
- (F) Incorrect as per para mentioned above.
- (G) Incorrect as per para mentioned above.
- (H) That the respondents seek permission of this Hon'ble Tribunal to advance further grounds during arguments.

In light of the above, it is submitted that the appellant being habitual in violating service discipline is incapable and inefficient has committed misconduct and therefore, the appeal may kindly be dismissed.


**District & Sessions Judge,
Peshawar.**

AFFIDAVIT

Declared on oath the contents of the written reply are correct to the best of knowledge and belief.


Deponent

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In Re S.A No. 552/2014

Habib ur Rehman

Vs

D & S.J Peshawar etc

REJOINDER ON BEHALF OF THE PETITIONER TO THE
COMMENTS FILED BY RESPONDENTS NO. 1

Respectfully Sheweth,

Reply to Preliminary Objections:

1. Incorrect. The petitioner has a strong locus standi & cause of action to file the instant appeal.
2. Incorrect.
3. Incorrect.
4. Incorrect. Nothing has been pin-pointed by Respondents whereby the petitioner is stopped by his own conduct.
5. Incorrect. The appeal is well within time.

ON FACTS:-

1. No Comments.

2. No Comments

3. Para No. 3 of the reply is misleading & is denied, while that of the appeal has detailed the true scenario.

4. Para No. 4 of the reply is ambitious & misleading & is therefore sternly denied. True picture is available in corresponding paras of the main appeal.

5. No. Comments

6. No Comments

7. No Comments

ON GROUNDS:-

A. Para No. A of the reply is misleading, incorrect, wrong & is therefore denied.

B. Incorrect, hence denied. The dismissal order as well as order of the learned Appellate Authority are wrong, illegal, unwarranted & are therefore liable to be set aside.

C. Para No. C is misleading & is therefore denied.

D. Para No-D of the reply is wrong, misleading & is therefore denied. True picture is available in corresponding paras of the main appeal.

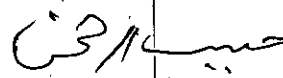
E. Incorrect & misleading, hence denied.

F. Incorrect, hence denied.

G. Incorrect, hence denied.

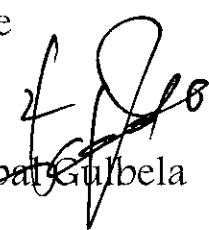
H. No Comments.

It is, therefore, humbly prayed that appeal of the appellant may very graciously be allowed as prayed for therein.



Appellate

Through

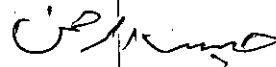

Javed Iqbal Gulbela
Advocate High Court
Peshawar.

AFFIDAVIT:-

I, Habib-ur-Rehman S/o Khanadan R/o Baghica Sufaid Sang, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of the Instant rejoinder are true and correct to the best my knowledge and belief and nothing has been concealed from this honorable Court.

ATTESTED







Deponent.

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

In Re S.A No. 552/2014

Habib-ur-Rehman Vs D & S.J Peshawar etc

REJOINDER ON BEHALF OF THE PETITIONER TO THE
COMMENTS FILED BY RESPONDENTS NO. 2

Respectfully Sheweth,

Reply to Preliminary Objections:

1. Incorrect. The petitioner has a strong locus standi & cause of action to file the instant appeal.
2. Incorrect.
3. Incorrect.
4. Incorrect. Nothing has been pin-pointed by Respondents whereby the petitioner is stopped by his own conduct.
5. Incorrect. The appeal is well within time.

ON FACTS:-

1. No Comments.

2. No Comments

3. Para No. 3 of the reply is misleading & is denied, while that of the appeal has detailed the true scenario.

4. Para No. 4 of the reply is ambitious & misleading & is therefore sternly denied. True picture is available in corresponding paras of the main appeal.

5. No. Comments

6. No Comments

7. No Comments

ON GROUNDS:-

A. Para No. A of the reply is misleading, incorrect, wrong & is therefore denied.

B. Incorrect, hence denied. The dismissal order as well as order of the learned Appellate Authority are wrong, illegal, unwarranted & are therefore liable to be set aside.

C. Para No. C is misleading & is therefore denied.

D. Para No-D of the reply is wrong, misleading & is therefore denied. True picture is available in corresponding paras of the main appeal.

E. Incorrect & misleading, hence denied.

F. Incorrect, hence denied.

G. Incorrect, hence denied.

H. No Comments.

It is, therefore, humbly prayed that appeal of the appellant may very graciously be allowed as prayed for therein.

صہب الرحمن

Appellate

Through

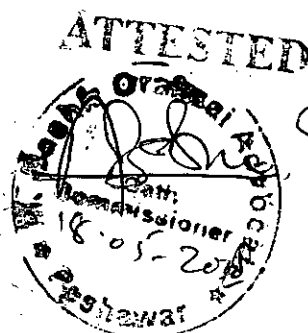
Javed Iqbal Gulbela

Advocate High Court

Peshawar.

AFFIDAVIT:-

I, Habib-ur-Rehman S/o Khanadan R/o Baghica Sufaid Sang, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of the Instant rejoinder are true and correct to the best my knowledge and belief and nothing has been concealed from this honorable Court.



صہب الرحمن

Deponent

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

In Re S.A No. 552/2014

Habib-ur-Rehman Vs D & SJ Peshawar etc

REJOINDER ON BEHALF OF THE PETITIONER TO THE
COMMENTS FILED BY RESPONDENTS NO. 2

Respectfully Sheweth,

Reply to Preliminary Objections:

1. Incorrect. The petitioner has a strong locus standi & cause of action to file the instant appeal.
2. Incorrect.
3. Incorrect.
4. Incorrect. Nothing has been pin-pointed by Respondents whereby the petitioner is stopped by his own conduct.
5. Incorrect. The appeal is well within time.

ON FACTS:-

1. No Comments.

2. No Comments

3. Para No. 3 of the reply is misleading & is denied, while that of the appeal has detailed the true scenario.

4. Para No. 4 of the reply is ambitious & misleading & is therefore sternly denied. True picture is available in corresponding paras of the main appeal.

5. No. Comments

6. No Comments

7. No Comments

ON GROUNDS:-

A. Para No. A of the reply is misleading, incorrect, wrong & is therefore denied.

B. Incorrect, hence denied. The dismissal order as well as order of the learned Appellate Authority are wrong, illegal, unwarranted & are therefore liable to be set aside.

C. Para No. C is misleading & is therefore denied.

D. Para No-D of the reply is wrong, misleading & is therefore denied. True picture is available in corresponding paras of the main appeal.

E. Incorrect & misleading, hence denied.

F. Incorrect, hence denied.

G. Incorrect, hence denied.

H. No Comments.

It is, therefore, humbly prayed that appeal of the appellant may very graciously be allowed as prayed for therein.

صہب الرحمن

Appellate

Through

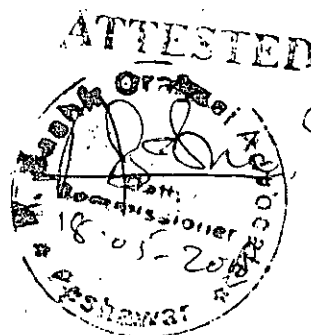
Javed Iqbal Gulbela

Advocate High Court

Peshawar.

AFFIDAVIT:-

I, Habib-ur-Rehman S/o Khanadan R/o Baghica Sufaid Sang, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of the Instant rejoinder are true and correct to the best my knowledge and belief and nothing has been concealed from this honorable Court.



صہب الرحمن

Deponent

حکومت صحیح رہے اور میں ٹرینوں میں

صدا عالی

ہو رہا ہے کہ اس کا اصل ^{14/1/2025}
جو کہ 17-1-24 کو مقرر ہے۔ اس وقت غریب
گھرنے سے تعلق رکھتا ہے اور کوئی اور ذمہ معاش میں
ہے۔ لہذا اس پر ضمان سے گزار سکی جاتی ہے۔
کہ مسائل کے اس میں تاریخ نشی نزدیک
کا حکم صادر ہو رہا ہے۔

عین نوٹس ہوئی

الحاصل
المسردہ 7/10/16
صیب الرحمن
ایضاً بالعدا اس صیب الرحمن

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 699 /ST

Dated 09 /04/2018

To

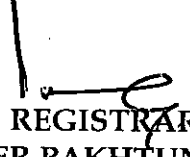
The District and Session Judge,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:

**ORDER/JUDGEMENT IN APPEAL NO. 552/2014, MR. HABIB UR
REHMAN.**

I am directed to forward herewith a certified copy of Judgment/Order dated 19/03/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 697-98 /ST

Dated 09 /04/2018

To

1. District Account officer,
Government of Khyber Pakhtunkhwa,
Swat at Saidu Sharif Swat.
2. District Education Officer (Elementary & Secondary Education) Female,
Government of Khyber Pakhtunkhwa,
Swat at Saidu Sharif Swat.

Subject: **ATTACHEMENT OF SALARY IN EXECUTION PEITITION NO. 233/17,
MST. ANWAR SULTANA.**

I am directed to forward herewith a certified copy of Order dated 05/04/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

**REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.**