

under which the concerned person claims to hold that office. There is no other power which is conferred by this clause on the High Court. If after necessary inquiry the High Court comes to the conclusion that the respondent before it does not have the lawful authority to occupy that office the High Court can make a declaration to that effect whereupon the office so held becomes vacant. The Supreme Court of Pakistan held in Masudul Hassan v. Khadim Hussain and another PLD 1963 SC 203 that power of granting relief in proceedings of quo warranto are confined to—

- (a) issuing an injunction to a person holding the office not to act therein and
- (b) where necessary, to declare the office to be vacant.

There is nothing in sub-clause (ii) from which the High Court may derive the authority to travel beyond the limits as enunciated above.

Even otherwise, the aforesaid direction given by the High Court amounts to posting of a particular civil servant to the post of the Divisional Forest Officer Muzaffarabad for which the necessary authority does not vest in the High Court or this Court. Consequently, the portion of the order of the High Court reproduced above shall stand vacated.

With the modification indicated above we find no force in this appeal and order its dismissal.

A.A./352/S.C

Appeal dismissed.

1993 P L C (C.S.) 308

[Federal Service Tribunal]

Before Ch. Hasan Nawaz and Muhammad Ismail, Members

ABBAS ALI

versus

THE EXECUTIVE ENGINEER (E) WAPDA, LAHORE and another

with No. 349(L) of 1988, decided on 5th May, 1992.

Service Tribunals Act (LXX of 1973)—

S.4—Appeal—Limitation—Condonation of delay—Disciplinary proceeding

as also order of dismissal from service suffering from irregularities giving to the root of the matter—Impugned order of removal from service was, thus, a nullity in the eye of law—No limitation against a void order—Appeal was competent in circumstances. [p. 311] A

(b) Civil Service—

—Dismissal from service—Impugned order of dismissal dated 11-1-1987 showed that civil servant was dismissed from service with effect from 1-11-1985, the date on which he was alleged to have absented himself from duty without leave—Validity—No executive order could be made to operate with retrospective effect—Order of dismissal could be made to operate with effect from 11-1-1987, when it was passed by competent Authority—Impugned order had brought about a material irregularity which could not be rectified—Order of dismissal was therefore, not warranted by law. [p. 311] B

(c) West Pakistan Water and Power Development Authority Employees (Efficiency and Discipline) Rules, 1978—

—Rr. 5 & 8—Provisions of R. 8(b), Government Servants (Efficiency and Discipline) Rules, 1973 pressed into service in dismissing civil servant—Validity—Nothing was brought on record to show that it was not reasonably practicable to give civil servant opportunity of showing cause against proposed action—Civil servant having rejoined office on 28-12-1986, he could easily be afforded opportunity to show cause against his dismissal from service—Procedure adopted by competent Authority being full of material irregularities, same could not be defended especially when civil servant was not provided with opportunity to defend himself. [pp. 311, 312, 313] C, D & E

(d) Service Tribunals Act (LXX of 1973)—

—S. 4—Appeal—Dismissal from service—No opportunity to defend himself provided to civil servant against proposed action—Procedure adopted by competent Authority in passing order of dismissal suffered from material irregularities—Order of dismissal was set aside with option to respondent Authority to proceed afresh against civil servant in accordance with law. [p. 313] E

Mian Mahmood Hussain for Appellant.

Sh. Afzaal Ahmad Qureshi for Respondents.

Date of hearing: 5th May, 1992.

JUDGMENT

CH. HASAN NAWAZ (MEMBER).—The appellant who was serving the respondents as a Telephonist was dismissed from service in

consequence of disciplinary proceedings on 11-1-1987 with the following Office Order:

Office of the
Executive Engineer,
Badami Bagh Division (E), WAPDA,
Lahore.

Office Order No. 5, dated 11-1-1987

As a result of service of show-cause notice upon the accused Mr. Abbas Ali s/o Muhammad Latif, Telephonist Chah Miran Sub-Division, Lahore vide this office letter No. 14179-80, dated 6-12-1986 sent at his home address, which was not responded by him. Later on said show-cause notice was got published by the Director-General, Public Relations WAPDA in the Wapda Khabarnama dated 14-12-1986 and the same has also not been responded by him. I, Executive Engineer, Badami Bagh Division, Lahore "as competent Authority", under the Pakistan Wapda Employees (E&D) Rules, 1978, am satisfied that as it is not reasonably practicable to give the said Mr. Abbas Ali Telephonist an opportunity to show-cause in terms of Rule 5 of the aforesaid Rules and, therefore, the said Mr. Abbas Ali Telephonist Chah Miran Sub-Division, Lahore is hereby dismissed from service under Rule 8(b) ibid with effect from 1-11-1985, the date from which he is absent from duty.

His service particulars are as under:

1. Name	Mr. Abbas Ali
2. Father's Name	Muhammad Latif
3. Home address	Gulla Mohrana, P.O. Same, Tehsil Narowal, Distt. Sialkot
4. Date of birth	15-5-1959
5. Date of joining	15-4-1978
6. Post held	Telephonist

(Sd.)
EXECUTIVE ENGINEER,
BADAMI BAGH DIVISION (E), WAPDA
LAHORE

2. His departmental appeal dated 9-3-1987 addressed to the Superintending Engineer was rejected and he came to the Tribunal with the present appeal under section 4 of the Service Tribunals Act, 1973, with the prayer that the impugned order of dismissal of 11-1-1987 and the order passed

on 3-2-1988 on his departmental appeal may be set aside with a direction of reinstatement in service.

3. As we have noticed before, the order of dismissal was passed on 11-1-1987 and the departmental appeal was submitted to the competent authority on 9-3-1987. On rejection of the departmental appeal, the appellant should have come to the Tribunal within 30 days of the communication of that order and the present appeal filed on 3-11-1988 is apparently time-barred. The appeal is accompanied by an application under section 5 of the Limitation Act read with section 7 of the Service Tribunals Act, 1973 for condonation of delay. The explanation for delay in filing the appeal is that the appellant learned about the rejection of his appeal on 25-10-1988. It is pleaded that he could not know about the fate of his appeal in spite of the fact that he frequently visited the respondent's Office for the necessary information.

4. The application for condonation of delay has been supported by means of an affidavit and we see no reason why the appellant's pleadings regarding receipt of information about the rejection of his appeal should not be believed as correct, particularly when there is nothing in the respondents' pleadings to show that letter dated 3-2-1988 regarding rejection of the appeal was duly despatched to him. No doubt that the letter has been addressed to the appellant and it should be presumed to have been received by him in the normal course of things. However, the department should have produced proof to show that it was in fact despatched to him and that he did receive it.

5. There is another point worth notice in so far as the appellant's request for condonation of delay is concerned. The record shows that there are certain material irregularities not only in the impugned order but also in the disciplinary proceedings culminating in the passage of this order. Try as we might, we do not find it possible to ignore these irregularities which go to the root of the matter. In view of the serious nature of these irregularities, the impugned order passed in this case by the respondent is apparently a nullity in the eye of law. This being so, there is substance in the argument that there is no limitation against a void order.

7. (sic) As for merits, the impugned order dated 11-1-1987 shows that appellant was dismissed from service with effect from 1-11-1985, the date on which he is alleged to have become absent from duty without permission. It is settled law that no executive order can be made to operate with retrospective effect. The order of dismissal could be made to operate with effect from 11-1-1987 when it was passed by the competent authority. This has brought about a material irregularity in the impugned order which cannot be rectified.

8. Further the impugned order shows that the competent authority proceeded under Rule 8(b) of Rules in dismissing the appellant from service. This rule provides that "nothing in rule 5 shall apply to a case where the authority competent to dismiss or remove a person from service or to reduce a

person in rank, is satisfied that for the reasons to be recorded in writing by the authority it is not reasonably practicable to give the accused an opportunity of showing cause." We fail to understand how these provisions could be attracted under the circumstances of this case. The appellant has placed on record a photostat copy of his arrival report (Annexure B) in response to final show-cause notice dated 6-12-1986. It shows that he submitted his arrival report on 28-12-1986 in compliance with the aforementioned notice of 6-12-1986. An endorsement of the concerned officer on this arrival report made on 29-12-1986 bears out that he was accepted on duty. It is borne out by Office Order 4, dated 4-1-1987 (Annexure C) that he was placed under suspension with effect from 1-11-1985 on account of absence from duty as reported by the concerned Sub-Divisional Officer through Memo. No. 1220-21, dated 21-12-1985. These documents leave little room for any doubt that the appellant did report to the Office on 28-12-1986 and that he was allowed to join. This being the factual position, it is not possible to hold that there was any justification for pressing the provisions of Rule 8(b) of the Rules into service. There is nothing on the record to show that it was not reasonably practicable to give him an opportunity of showing cause against the proposed action. The reverse of it is rather true in that the appellant had joined his office on 28-12-1986 and he could easily be afforded an opportunity to show-cause against his dismissal from service.

9. Apart from what has been said in the preceding paragraphs, we find that proper procedure has not been adopted in this case. If at all it be presumed that action under Rule 5(iv)(a) of the Rules was justified, there is no reason why the appellant should not have been served with a final show-cause notice under Rule 5(v)(b) of the Rules, calling upon him to show-cause within a reasonable time why the proposed penalty should not be imposed against him. The final show-cause notice of 6-12-1986 issued in this case leaves almost everything to be desired. No penalty was proposed in this notice and he does not appear to have been called upon to explain in accordance with the spirit of the rules as to why he should not be dismissed from service.

10. There is another point worth notice. The order of suspension dated 4-1-1987 shows that the competent authority advised the SDO concerned of Chah Miran Sub-Division to prepare a draft charge-sheet with statement of allegations and forward it to the Executive Engineer Officer for vetting purposes. There is substance in the contention that the order of suspension with the aforementioned advice for preparation of a charge-sheet nullified the previous disciplinary proceedings held against the appellant.

11. It seems to us that the competent authority was not sure about how to proceed against the appellant in the matter. The order of suspension dated 4-1-1987 was passed irrespective of the final show-cause of 6-12-1986, if at all it can be treated as such a notice within the meaning of Rule 5(v)(b) of the Rules. Then, in the impugned order the competent authority took refuge in the

provisions of Rule 8(b) of the Rules saying that it was not reasonably possible to provide the appellant with an opportunity to show-cause against the proposed action. Be that as it may, the procedure adopted by the respondents in this case is full of material irregularities and it cannot possibly be said that the appellant has been provided with an opportunity to defend himself.

12. For these reasons, the appeal is accepted and the impugned orders dated 11-1-1987 and 3-2-1988 are set aside. The appellant shall be reinstated in service, but the respondents shall proceed against him afresh under the Pakistan WAPDA Employees (Efficiency & Discipline) Rules from the stage whence the procedural mistake can be rectified. They may then pass any order against the appellant in accordance with law including that of suspension.

13. There will be no order as to costs.

A.A./749/Sr.F

Order accordingly.

1993 P L C (C.S.) 313

[Federal Service Tribunal]

Before Ch. Hasan Nawaz and Muhammad Ismail, Members

MUHAMMAD RIAZ

versus

THE EXECUTIVE ENGINEER (E), WAPDA,
PASRUR and another

Appeal No. 232(L) of 1989, decided on 8th July, 1992.

(a) Civil service---

---Dismissal from service---Order of dismissal in first para of the order stated that competent authority found civil servant not guilty of the charge, while in second para it was said that he was dismissed from service---Order in question being self-contradictory was clearly a paradox and had been passed without application of mind---Order of dismissal of civil servant was thus, not in accordance with law and as such not sustainable. [p. 317] A

(b) Service Tribunals Act (LXX of 1973)---

---S.4---West Pakistan Water and Power Development Authority (Power Wing) Technical Subordinates (Line Staff) Service/Recruitment Rules, 1971---Appeal---Dismissal of civil servant on the ground that he was not qualified to be appointed to the post which he had secured by posing himself as "Middle Pass" while he was in fact illiterate---WAPDA Line Staff Service Rules, 1971 prescribe that qualification for recruitment as a Lineman should be "preferably

2003 S C M R 1126

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Hamid Ali Mirza, JJ

PROVINCE OF SINDH through Secretary Education, Government of Sindh, Karachi and 3 others---Petitioners

Versus

Miss SAIMA BANO and others---Respondents

Civil Petitions, for Leave to Appeal Nos.544-K to 555-K of 2002, decided on 17th July, 2002.

(On appeal from judgment dated 29-3-2002, passed by the Sindh Service Tribunal, Karachi, in Appeals Nos. 123 to 134 of 1999).

Sindh Service Tribunals Act (XV of 1973)---

---S.4---Constitution of Pakistan (1973), Art.212(3)---Termination of service---Departmental appeal /representation despatched under postal certificate---Non-consideration of such appeal/representation---Civil servant was terminated from service by Competent Authority and against the order of termination, civil servant preferred departmental appeal/representation which was despatched under postal cover--Appellate Authority did not consider the appeal at all or, the same was not placed before it for the reasons best known to the quarters concerned---Order passed by the Appellate Authority was not a speaking order---Civil servant was not even afforded a chance of personal hearing before passing the termination orders---Authenticity and genuineness of the postal certificate was neither challenged, nor questioned by the Authorities before Service Tribunal---Appeal before Service Tribunal was allowed, termination order was set aside and the case was remanded to the Authorities for decision afresh---Validity---Where the civil servant was not afforded a chance of personal hearing before passing of termination order, such order would be void ab initio---Service Tribunal had rightly allowed the appeal and set aside the termination order--Judgment passed by the Service Tribunal was well-reasoned and based on the law laid down by Supreme Court---No misreading or non-reading of material available on record was found---Question of general public importance was also not involved in the matter---Leave to appeal was refused.

Suleman Habibullah, Additional Advocate-General, Sindh and Akhlaq Ahmed Siddiqui, Advocate-on-Record for Petitioners.

Nemo for Respondent.

Date of hearing: 17th July, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Through this common judgment, we intend to dispose of the above civil petitions for leave to appeal, which have arisen out of a consolidated judgment dated 29-3-2002, passed by the Sindh Service Tribunal, Karachi, (hereinafter referred to as the Tribunal) in

5 Appeals Nos. 123 to 134 of 1999.

2. Briefly stated the facts of the case are that the respondents were appointed as Primary School Teachers by S.D.E.O. Males/Females, Hyderabad, in September, 1998. After necessary medical check-up, they were issued posting orders. The Government of Sindh, Education Department, Karachi, vide Letter No.SO(C-I) Edu. E & A-735/97, dated 28-11-1998, directed the Director Primary Education Hyderabad, to terminate the services of the respondents as they were appointed during ban period in violation of Government instructions. In pursuance thereof, the Sub-Divisional Education Officer, Male/Female, Tando Allahyar, by separate orders dated 3-12-1998, terminated their services. Feeling aggrieved, the respondents filed departmental appeals addressed to the Director Primary Education, Hyderabad, and District Education Officer (Male/Female), Hyderabad, on 18-12-1998, under postal certificate, which were dismissed, being time-barred vide separate orders dated 20-3-1999.

3. Feeling dissatisfied, the respondents filed service appeals, and after hearing the learned counsel for the parties, the Tribunal vide impugned judgment dated 29-3-2002, remanded the matters to the Director Primary Schools, Hyderabad Region/respondent No.2, for passing fresh orders after considering the first departmental appeals submitted by the respondents. Hence this petition.

4. Mr. Suleman Habibullah, learned Additional Advocate-General, inter alia, contended that the termination orders of the respondents were issued by the Competent Authority, which did not require interference by the Tribunal; and that the appeals filed by the respondents before the Tribunal were time-barred.

5. We have considered the arguments of the learned Additional Advocate-General and carefully examined the record. Admittedly, the respondents' departmental appeals were dispatched under postal certificate dated 18-12-1998 and the other submitted by them in February, 1999. The authenticity and genuineness of the postal certificate was neither challenged nor questioned by the petitioners before the Tribunal. It is also borne out from the record that the departmental authority, i.e., Director, Primary Education, Hyderabad, did not consider the appeals at all or the same were not placed before him for the reasons best known to the quarters concerned. The orders passed by the Director Primary Education were not speaking order.

Moreover, the respondents, were not even afforded a chance of personal hearing before passing of the termination orders, which were void, ab initio, and the respondents were condemned unheard, which is clear violation of natural rules and the law laid down by this Court. The Tribunal rightly allowed the appeals filed by the respondents setting aside the termination orders. It would be pertinent to reproduce here the relevant paragraph of the impugned judgment, which reads as under:--

..... Accordingly, the impugned order(s) dated 20-3-1999 passed by respondent No.2 is/are hereby set aside and the matters is/are remanded to him for passing fresh orders after considering the first departmental appeal submitted by the appellant(s) through post on 18-12-1998 and also to afford personal hearing to the appellant(s) and then pass speaking order, purely in accordance with law on merits, within 90 (ninety) days from the date of receipt of this judgment."

6. The impugned judgment is well-reasoned and based on the law laid down by this Court. There is no misreading or non-reading of the material available on the record. Moreover, question of general public importance is also not involved in this matter. Resultantly, all the petitions are dismissed and

leave to appeal refused.

7. The Tribunal had granted 90 days time to petitioner No.2 to decide the matter from the date of the receipt of its judgment. Since the petitioners have challenged the impugned judgment before this Court, and the time given by the Tribunal has already expired, we therefore, direct that the competent Authority shall decide the matters within 30 (thirty) days from the date of receipt of the copy of the judgment of this Court.

M.H./P-73/S

Petition dismissed.

2007 PLC (C.S.) 85

[Federal Service Tribunal]

Before Qazi Muhammad Hussain Siddiqui and Rashid Ali Mirza, Members

RASHEED AHMAD MEMON

Versus

NATIONAL HIGHWAY AUTHORITY (NHA) and others

Appeal No.259(K)CS of 2002, decided on 4th January, 2006.

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---Ss. 3, 5, 6 & 7---Service Tribunals Act (LXX of 1973), S.4---Dismissal from service---Appeal--- Appellant serving as Engineer (BPS-19) was dismissed from service after issuing him show-cause notice and charge-sheeting him on allegation of misconduct, inefficiency, etc.---Disciplinary proceedings against appellant had not been drawn in accordance with Removal from Service (Special Powers) Ordinance, 2000---Allegations against appellant were not specifically mentioned in office order whereby Inquiry Committee of three officers was constituted under the orders of competent Authority---Inquiry was held on the basis of earlier statements of appellant and others and their statements were recorded in the form of question-answer by Inquiry Committee--- Appellant denied the allegations contained in the two show-cause notices, but no chance of cross-examination was given to appellant---Validity---No chance having been given to appellant to cross examine the witnesses, disciplinary proceedings against him stood vitiated and on such proceedings appellant could not have been penalized legally---Where allegations of fact were denied, a departmental inquiry was absolutely necessary giving accused full chance of defending himself by means of cross-examination, but that had not been done in case of appellant by Inquiry Officer or Inquiry Committee---Regular inquiry, which had to be followed by a charge-sheet, was not dispensed with in the two show-cause notices and no reason for that was mentioned therein--- Impugned order of dismissal otherwise issued by incompetent Authority, being illegal, void and nullity in the eyes of law, was set aside with direction to authorities to reinstate appellant in service from the date of his dismissal with all back-benefits for the period he was not gainfully employed elsewhere.

Pir Bux Langah v. Chairman, National Highway Authority and others Appeal No.1138(R)CE of 2002; 1997 PLC (CS) 873; 2003 SCMR 207; 2000 PLC (CS) 1252; 1997 TD (Service) 346; NLR 2003 (Service 1); 1980 SCMR 850; 1997 SCMR 1543; 2004 SCMR 316; 2004 SCMR 49; 2005 SCJ 455; 2003 PLC (CS) 314; 2003 SCMR 1126; 1993 SCMR 683; 1996 PLC (CS) 868; PLD 1994 SC 22; 1985 PLC (CS) 219; 1990 PLC (CS) 745; 2003 PLC (CS) 7; 2003 PLC (CS) 365; 2003 SCMR 256; 2004 SCMR 294; PLJ 1999 TRC (Service) 374; 1992 SCMR 1789; PLD 1994 SC 222; 1996 SCMR 201; 1999 SCMR 841; PLD 1981 SC 176; 1987 SCMR 1562; PLC 2004 (CS).SC 1275; 2004 SCMR 1662; PLD 2002 SC 667; 1997 SCMR 1543 and 2005 SCMR 678 ref.

Ansari Abdul Lateef for Appellant.

Omar Nisar for Respondents.

Date of hearing: 27th October, 2005.

JUDGMENT

QAZI MUHAMMAD HUSSAIN SIDDIQUI (MEMBER)---While he had been serving as Director Engineer (BPS-19), National Highway Authority, Karachi (hereinafter called the NHA), the appellant was dismissed from service under section 3(e) of the Removal from Service (Special Powers) Ordinance, 2000, vide office order, dated 29-3-2002, said to have been delivered to him on 3-4-2002. He preferred a departmental appeal to the respondent No.1 on 18-4-2002 and having not received the reply thereof, he filed the present appeal before the Tribunal on 13-7-2002 after waiting for the statutory period of 60 days.

2. Briefly, the history of this case, gleaned from the record, is that the Regional Officer of NHA Sindh Karachi awarded the following four contract to contractor Ameer Business Corporation (for short Messrs ABC) for certain works to be carried on Super Highway vide letter, dated 25-4-2000:

"(a) Contract No.EM(S)-6188, (b) Contract No.EM(S)-6189, (c) Contract No.EM(S)-6190 and (d) Contract No.EM(S)-6191."

3. During the currency of the said project, a complaint (through fax from Messrs ABC was received against Muneer A. Memon, the then Deputy Director (Maintenance), NHA Karachi alleging that the said Deputy Director had taken over the said Engineering Maintenance Contract No.6189 in their name without obtaining their permission. It was further stated in the complaint that the matter had already been reported to NHA Regional Office, Karachi, but no action was initiated by that office. The competent authority took cognizance and ordered inquiry to probe into the matter vide letter, dated 9-9-2000, appointing Messrs Ateeq Ahmed and Pervez Akhtar, as Inquiry Committee. The fact-finding report of the above committee, received vide letter dated 23-9-2000, was forwarded to the General Manager, Sindh, NHA Karachi viz. Abdullah Mahesar for comments vide Member Highways' letter, dated 7-11-2000'. In response to that fact-finding report, Abdullah Mahesar, vide his letter dated 22-11-2000, recommended that the contractor Messrs Ameer Business Corporation be black-listed and its performance security (reference NHA code clause No.4 of chapter three) be forfeited because it was quite clear that the said firm did not have sound credentials, vide letter, dated 22-11-2000. Such letter was said to have not been received by NHA, Headquarters, Islamabad. However, the Headquarters pursued the case vigorously. Meanwhile, the then General Manager, Abdullah Mahesar was transferred and was replaced by Mian Abdul Haq.

4. The new General Manager, Sindh Mian Abdul Haq was not aware about 'the above-said inquiry in the matter, but during a joint visit to the site with the appellant in January, 2000, he found certain defects in the work on Super Highway, which the appellant could not justify; hence, he examined the record of all the four contracts and found that although the four contracts were processed in the same period by the same Field Unit, but the procedure for contract under EM(S)-6189 was different from that of other above mentioned three contracts. The bills whereof were marked to the General Manager, Sindh, whereas, the bill of EM(S)-6189 was marked directly to the Deputy Director (Accounts). Such deviation in processing of the bills created doubt in the mind of General Manager, Sindh, therefore, he reported the matter to the Member (Operations), NHA, Headquarters, vide letter, dated 30-4-2001. Prior to that, the then General Manager, Sindh Abdullah Mahesar had appointed Director (Maintenance/Procurement) Syed Raza Hamid Zaidi to make an inquiry in the light of the contents of the facts of the complaint of Messrs (ABC). The said Director approached Messrs ABC, who, in writing, denied to own the fax, but then the closure of the inquiry by the said Director was not found on record.

5. In pursuance of the aforementioned letter of the General Manager, Sindh dated 30-4-2001, the

NHA, Headquarters appointed Brig (R) Javed Abbas, the then General Manager (N.-W.F.P.), as Inquiry Officer, vide letter, dated 5-5-2001, but due to his poor health, he could not continue the same; hence, Raja Nowsherwan, the then General Manager (Balochistan) was appointed Inquiry Officer in his place, vide letter, dated 30-5-2001 to probe into the matter. Raja Nowsherwan, General Manager (Balochistan) submitted his inquiry report, dated 23-6-2001, which is on record /file at pages 107 to 115. On the basis of his findings, a show-cause notice, dated 6-7-2001 was issued to appellant Rasheed A. Memon by Pervez Mehmood Khan, D.G. (Admn.)/Authorized Officer. Relevant portion of the show-cause notice is reproduced as under:

"(i) That you while posted as Director (Construction) in G.M. Office, Karachi concealed the facts from new G.M. Mr. Abdul Haque as the then G.M. (Mr. Abdullah Mehaser) had instructed you that the bill in regard to Contract No.EM(S)-6189 should be paid consequent to the findings of the inquiry, but you did not follow the instructions of the then G.M.

(ii) That you did not inform the new General Manager (Mr. Abdul Haque) about the details that an inquiry was under process in the Head Office on the above issue.

(iii) That you processed the same bill on a fresh noting and marked it directly to DD (Accounts) for payment."

The reply dated 27-7-2001 of the show-cause notice submitted by Rasheed A. Memon was as under:

"The Director-General (Admn.)/Authorized Officer,
National Highway Authority, Islamabad.

Subject: Show-cause notice.

Reference: Your letter No.Inq/CS/Admn/NHA/134/2001/166, Islamabad dated 6th July, 2001.

Sir,

It is refuted/rebutted that while posted as Director (Construction) NHA (Sindh) Karachi, I have committed any act of commission and omissions as alleged in the show-cause notice.

(i) There is no truth in it as alleged in para. under reply that I have concealed any fact from new General Manager (Sindh) Mr. M. Abdul Haque, I was never transmitted any instructions by former General Manager (Sindh), Mr. Abdullah Mahesar for onward transfer to new General Manager to new General Manager (Sindh) hence accusing me of such allegations which were not known to me is shocking and surprising. I do hereby state on oath that no any instructions were given to me by Mr. Abdullah Mahesar to be given to new General Manager (Sindh) as such the question of any concealment does not arise on my part.

I have no knowledge about any inquiry or findings of inquiry on Contract No.EM(S)-6189 and no any such instructions regarding Bills of this contract were specially made known to me by the former General Manager (Sindh) hence allegations are refuted and rebutted being misquoted.

(ii) That I had no knowledge about proceedings of any inquiry if pending as such I had nothing to tell to new General Manager (Sindh) as such allegations are refuted and rebutted in respect.

(iii) That I never processed any fresh bill as alleged but the already 'processed bill, which was with Accounts Section and the note sheet was missing as such on their pointation the missing note sheet was resubmitted to them to be attached with the pending bill and if there had been any prohibitory instructions in my knowledge I would have never even processed the bill and the Accounts Branch would have refused to accept the same and payment would not have been made.

I once again refute and rebut the entire allegations of para.(i), para.(ii) and para.(iii) being untrue and redundant.

(2) There is no any act of inefficiency or misconduct on my part as alleged hence allegations are refuted in its entirety.

(3) That there is no any documentary proof with NHA from which it can be presumed that I was intimated any such information by any memo./letter/communication regarding subject issue hence allegations rebutted.

(4) There is no fault whatsoever on my part hence threatening me of alleged penalty is unjustified when there is nothing against me with NHA.

I would, therefore, humbly and respectfully submit that impugned show-cause notice may very graciously be recalled and withdrawn against me and I be exonerated from untrue allegation.

Soliciting for personal hearing.

Karachi, dated 27-7-2001

Yours faithfully
(Rasheed Ahmed Memon),
Director (Construction) U.S.
NHA (Sindh), Karachi."

The appellant was then called for personal hearing on 21-8-2000, which was followed by appointment of another Inquiry Committee comprising Brig. (R) Parwez Mahmood Khan, D.G. (Admn.) NHA, Abdul Rauf Ch. Executive Director (RAMD) and Maj. Syed Sajid Pervez Deputy Director (Vigilance), vide letter dated 25-8-2001 by Director (Personnel). The Inquiry Committee submitted its report wherein the findings were based, "on the preceding statement and questions with answers" of the following persons, besides such statements of the accused officers namely Syed Raza Hamid Zaidi, Director (Maintenance), Munir Ahmed Memon, Deputy Director (Maint) and Pir Bux Langah, Deputy Director (Accounts):--

- "(1) Mian Abdul Haque, General Manager (Sindh),
- (2) Abdullah Mahesar, Ex-G.M. (Sindh),
- (3) Pir Bux Langah, Deputy Director (Accounts),
- (4) Nawab Ali Kalwar, Assistant Director (Accounts).
- (5) Mumtaz Ali, representative of Messrs ABC."

The conclusion of the Inquiry Committee is reproduced as under:--

CONCLUSION

Foregoing in view and having given consideration to the different aspects of the issues regarding irregularities occurred in Emergency Maintenance Contract No.EM(S)-6189, the conclusion is as under:--

(a) The following officers willfully concealed the (not legible) constituted by NHA Head Office which tantamounts to keep the new G.M. (Sindh) (Mian Abdul Haq) in dark regarding the action to be taken against the subject Contractor:--

- (i) Syed Raza Hamid Zaidi, Director (Maint)/Highway,
- (ii) Mr. Munir Ahmed Memon, Deputy Director (Maint),
- (iii) Mr. Pir Bux Langah, Deputy Director (Accounts),
- (iv) Mr. Nawab Ali Kalwar, A.D. (Accounts).

(b) The following Officers concealed the information from the new G.M. (Sindh) (Mian Abdul Haq) regarding the observations made by the ex-G.M. (Sindh), (Mr. Abdullah Mahesar) on the Inquiry Report dated 13th September, 2000 (page.122-125) and letter written to Member (Highways) dated 22-11-2000 (placed at page 63):--

- (i) Syed Raza Hamid Zaidi, Director (Maint),
- (ii) Mr. Pir Bux Langah, Deputy Director (Accounts),
- (iii) Mr. Nawab Ali Kalwar, A.D. (Accounts).

(c) The following officers fraudulently and willfully favoured the Contractor Messrs ABC by removing original noting (page 40) from the file containing the remarks of ex-G.M. (Sindh) (Mr. Abdullah Mahesar) regarding the stoppage of the payment and replacing with new noting (page 41). The replaced noting was directly submitted to D.D. (Accounts) instead of G.M. (Sindh) violating the procedure:--

- (i) Syed Raza Hamid Zaidi, Director (Maint),
- (ii) Mr. Rasheed Ahmed Memon, Programme Manager,
- (iii) Mr. Pir Bux Langah, DD (Accounts),
- (iv) Mr. Munir Ahmed Memon, Deputy Director (Maint),
- (v) Mr. Nawab Ali Kalwar, Assistant Director (Accounts).

(d) The following officers, with a view to provide undue favour to the Contractor Messrs ABC, convinced DD (Accounts) (Mr. Pir Bux Langah) and A.D. (Accounts) (Mr. Nawab Ali Kalwar) to process the case of payment of the contractor for 4th and final bill release of Bank Guarantee and not to bring the matter of inquiry to the notice of new G.M. (Sindh) (As a proof copy of statements is attached at pages 70 and 71).

- (i) Syed Raza Hamid Zaidi, Director (Maint),
- (ii) Mr. Rasheed Ahmed Memon, Programme Manager,

(iii) Mr. Munir Ahmed Memon, Deputy Director (Maint), Super Highway.

(e) Incorrect practice has been carried out by Ex-G.M. (Sindh) Mr. Abdullah Mahesar by making Committee of the officer to regularize the advancement of Maintenance Contract by approval of variation order (more than power delegated to G.M. for the item of cut vegetation) (Page 87) instead of tendering which was instructed by NHA, HQ, Islamabad (page 86).

(f) The Contractor Messrs ABC has been providing illegal gratification to the officers of G.M. (Sindh) to obtain their undue favour in carrying out the project (copy of the questioner of the contractor duly signed is attached at (page 108). However, the contractor did not provide the names of the officers involved in the corruption. Keeping in view the observations of Ex-G.M. (Sindh) (page 63) and suggestions of Inquiry Report of NHA, HQ, Islamabad (pages 122-125), the following actions are suggested to be taken against the contractor.

The Contractor Messrs ABC may not be allowed to participation in the future bidding/tenders of NHA and should be blacklisted.

(ii) The following withheld amounts of the said Contractor against Contract No.EM(S)-6189 and 5% Retention money may also be forfeited:-

10 % of the 4th and final bill	Rs.307,464
5% Retention money	Rs.241,225
Total amount	Rs.548,689

6. On the basis of the above inquiry report, following show-cause notice, dated 27-9-2001, was issued to appellant Rasheed Ahmed Memon: --

SHOW-CAUSE NOTICE

(1) That you, Mr. Rasheed Ahmed Memon, Director (BS-19), NHA (Sindh), Karachi (under suspension), while posted as Programme Manager G.M. (Sindh)'s Office NHA, Karachi committed the following acts of commission and omission:-

(a) That you willfully concealed the facts regarding the findings of the report furnished by the Inquiry Committee constituted by NHA HQ in the case concerning Messrs ABC in Emergency Maintenance Contract No.EM(S)-6189 consequent upon transfer of Mr. Abdullah Mahesar, G.M. (Sindh) and assumption of duty in his place by Mian Abdul Haq. This tantamounted to keeping the new G.M. (Sindh) in dark regarding the action to be taken against the Contractor Messrs ABC.

(b) That you, with the ill-intention of extending undue favour to the Contractor Messrs ABC, convinced DD Accounts (Mr. Pir Bux Langah) and A.D. Accounts (Mr. Nawab Ali Kalwar) to process the case of payment of the contractor for fourth and final bill/release of bank guarantee and not to bring the matter of inquiry to the notice of the new G.M. (Sindh).

(2) Whereas, the above stated facts amount to misconduct and inefficiency under section 3 of the Removal from Service (Special Powers) Ordinance, 2000 as amended vide Ordinance No.V of 2001 and render you liable for imposition of major penalty of dismissal from service.

(3) That as a sufficient proof in support of the allegations mentioned above and, keeping in view the conclusion of the Inquiry Committee, it has been decided to serve upon you this show-cause notice as required under the rules.

(2) You are, accordingly, called upon to show cause as to why the major penalty of dismissal from service may not be imposed on you. Your reply should reach the undersigned within seven days of the receipt of this notice. In case no reply is received within the stipulated period, it shall be assumed that you have nothing to say in your defence and action shall be taken ex parte.

(5) You are also required to state in writing, if you desire to be heard in person by the competent authority.

(6) A copy of the inquiry report is enclosed.

(Sd.) (Maj. Gen. Tariq Javed),
Chairman NHA.

Encl. (Enquiry Report)."

The appellant replied to Show-Cause Notice as under:--

"The Chairman, National Highway Authority,
Islamabad.

Subject: Reply to show-cause notice dated 27-9-2001

Sir,

Kindly refer your Show-Cause Notice No.Inq/CS/Admn./NHA/134/2001/552, dated 27-9-2001.

I have gone through the allegations as alleged against me in the show-cause notice and do hereby deny the same word by word, para. by para. and in toto being incorrect and false. My reply is as under:--

(a) That the contents of para. under reply are false, misconceived and untrue as such denied. It is denied that I had willfully concealed the facts regarding the findings of the report furnished by the Inquiry Committee. I have in my reply dated 27-7-2001 (photocopy enclosed) to previous show-cause notice dated 6-7-2001 and para. (a) of said reply be read into the instant reply as part and parcel and are not repeated for sake of brevity.

(b) The contents of para. under reply are denied in its entirety and totality being incorrect and flimsy. I never had any ill intention of extending undue favour to the contractor Messrs ABC. It is incorrect and wrong that I had convinced DD (Accounts) and AD (Accounts) to process the case of payment of the contractor for bill or released of Bank Guarantee and I deny the same. It is also denied that any effort was made by me on DD and AD (Accounts) for not bringing the matter of inquiry to the notice of the new G.M. (Sindh) hence allegations denied.

(2) There is no misconduct and inefficiency on my part which comes within the purview of section 3 of the Ordinance, 2000 as amended till to date as such I am not liable for any penalty major or minor.

(3) There is no iota of evidence against me with NHA as alleged and neither enquiry was conducted strictly under the NHA (E&D) Rules, 1995, hence I have been unnecessarily dragged in the issue with no fault on my part.

In view of above contention and being innocent I may very kindly be exonerated from allegations as alleged in the show-cause notice, dated 27-9-2001 and my reply dated 27-7-1991 be also accepted as part extension of reply and justice be done to me.

Your obediently
(Sd.) (Rasheed Ahmed Memon)
Director (under suspension) NHA
Regional Office, Sindh, Karachi

Karachi dated 8th October, 2001
Encl. Photostat copy of reply dated 27-7-2001."

Chance of personal hearing was given to the appellant and then he was dismissed from service vide impugned order, dated 29-3-2002.

7. We have heard the learned counsel for the parties. We have also examined the record with the help of the learned counsel for the parties.

8. The learned counsel for the appellant argued that the disciplinary proceedings against the appellant had not been drawn in accordance with the Removal from Service (Special Powers) Ordinance, 2000 (hereinafter called the "Removal Ordinance, 2000") as amended upto date. According to the learned counsel, under S.R.O.411, dated 13-6-2000, notified by the Government of Pakistan in relation to the Removal Ordinance, 2000, the competent authority in respect of the appellant was Administrative Secretary, Ministry of Communication; that there being no provision under the S.R.O. for delegation of powers, as such, the action of dismissal taken by respondent No.4 (Chairman, NHA) was without lawful authority as he was not authority under the said Ordinance; that the appellant was not aware about the inquiry being conducted in the matter of Contract No.EM(S)-6189 at the NHA, Headquarters and he had not kept Mian Abdul Haq, General Manager, Sindh in dark about the said report as alleged in the show-cause notice; that the appellant was not aware about the note of previous General Manager, Abdullah Mahesar regarding stoppage of payment and he had not removed the alleged note of General Manager from the file, but on being given to understand by the Accounts Section (Where the bill had been lying) that the previous General Manager had approved payment of the 4th bill of Messrs ABC, he put up a fresh note for payment and sent it to Deputy Director (Accounts) knowing that the same would be sent to the General Manager Mian Abdul Haq for further necessary action; that the bona fide of the appellant was apparent from the fact that he had recommended withholding of 10% amount of the bill for rectification of the defects in the work carried out by Messrs ABC; that if the appellant had any corrupt intention or motive for obtaining any gratification from the contractor Messrs ABC, he would not have made the recommendation of withholding 10% amount from payment of the 4th bill of Messrs ABC in respect of Contract No.EM(S)-6189; that the allegations in the two show-cause notices were based on the statements of General Managers, Abdullah Mahesar and Mian Abdul Haq, Pir Bux Langah, Deputy Director, (Accounts), Nawab Ali Kalwar, Assistant Director (Accounts) and Mumtaz Ali recorded in the preliminary inquiries at the back of the appellant and the appellant was not given any chance to cross-examine these witnesses, as such, their evidence could not legally be used against the appellant to penalize him; that no loss was caused to the Government by payment of the 4th bill of Messrs ABC pertaining to Contract No.EM(S)-6189 and that the appellant had also not acquired any monetary gain by processing the payment of the bill; that so far as sending the 4th bill to Deputy Director (Accounts) was

concerned, it was sent to him for processing further after rectification of the defective work; that if the appellant had adopted wrong procedure it was the duty of the Accounts Section to raise objection on it, but no objection was raised by the Accounts Section and the appellant had, as a matter of fact, sent the fresh note to the Accounts Section on the insistence of Deputy Director (Accounts) and Assistant Director (Accounts); that in view of the facts and circumstances, mentioned above, the appellant had not committed any misconduct and a harsh penalty of dismissal from service could not have been imposed on him by the respondent No.4, who was not the competent authority under the law. In support of his above contentions, the learned counsel for the appellant relied on judgment dated 10-6-2003 of this Tribunal passed in Pir Bux Langah v. Chairman, National Highway Authority and others Appeal No.1138(R)CE of 2002; 1997 PLC (CS) 873; 2003 SCMR 207 and 2000 PLC (CS) 1252.

9. Basing his arguments on the written comments filed on behalf of the respondents, the learned counsel for the respondents stated that the bills for three contractors viz. 6188, 6190 and 6191 were directly marked to the G.M. (Sindh), but the bill for Contract No.6189 was directly marked to the Deputy Director (Accounts); that such deviation in processing of the bills created doubt in the mind of the G.M. (Sindh), therefore, he reported the matter to Member (Operations), NHA HQ, vide letter, dated 30-4-2001 in pursuance of which, a preliminary inquiry for probing into the matter was held by Raja Noshewan Sultan, G.M. (Balochistan) and a show-cause notice was issued to the appellant by the Chairman, NHA, but action on it was held in abeyance, and a fresh inquiry under the order of the Chairman was held by a Committee of three Officers, associating the appellant in the inquiry proceedings; that it was proved in the inquiry that the appellant along with other four officers of NHA did not disclose the previous recommendations of the then G.M. (Sindh) Abdullah Mahesar regarding the stoppage of the payment of Messrs ABC and forfeiture of their performance security to new G.M. (Sindh) Mian Abdul Haq; that on the contrary the appellant recommended/released the 4th and final bill of the contract Messrs ABC along with performance security (a) without waiting the result of the above inquiry proceedings, (b) despite having knowledge thereof deliberately, (c) by keeping the new G.M. (Sindh) in dark, (d) by tampering the record of the case, and (e) reproduced the official documents in back dates and directly submitted to DD (Accounts) for payment instead of G.M. (Sindh) as per practice in vogue; that as per statement of Mumtaz Ali, representative of contractor Messrs ABC that the appellant along with other officers of NHA had been getting commission from them; that the appellant could not justify his position in writing to the show-cause notice, dated 27-7-2001; hence, he was rightly dismissed from service by the competent authority after giving him a chance of personal hearing; that the inquiry by Raja Noshewan Sultan was a fact-finding inquiry which was not agreed to by the competent authority; hence, fresh inquiry was ordered by the competent authority to be held by a committee of three officers.

Regarding objection of the learned counsel for the appellant about the Chairman, NHA, being not competent authority under S.R.O.411 dated 13-6-2000 and the Secretary, Ministry of Communication, being competent authority, it was stated in para.39 of the written comments as under:

"No comments for the want of knowledge. This honourable Tribunal may please examine."

It was admitted in the written comments (para.37) that the question of cross-examination of the witnesses by the appellant was not considered necessary by the Inquiry Committee before which the appellant had allegedly admitted that he reproduced the new noting sheet in place of missing noting sheet of the contract and to have directly submitted the bill with fresh noting to the Deputy Director (Accounts) for payment; that due to the order of the competent authority to hold fresh inquiry in the matter, the previous show-cause notice issued on 6-7-2001 by Parwez Mehmood Khan, D.G. (Admn.) as Authorized Officer, had become infructuous; the learned counsel for the respondents urged that the appeal be dismissed as having no merit.

10. We have carefully considered the above arguments of both sides and minutely examined the record of the case.

11. We have found that the disciplinary proceedings against the appellant had not been drawn in accordance with law. Action for disciplinary proceedings against a civil servant at the relevant time is to be taken/initiated under the Removal Ordinance, 2000, which overrides any other law for the time being in force. If in the opinion of the competent authority a person in Government or corporation service is inefficient, guilty of misconduct, corrupt, is engaged in subversive activities and found to have been appointed or promoted on extraneous grounds in violation of law and the relevant rules, the competent authority after an inquiry by the Inquiry Officer or Inquiry Committee appointed under section 5, may, notwithstanding anything contained in law or terms and conditions of service of such person, by an order in writing impose major or minor penalty upon him under section 3 of the Ordinance. The procedure for initiating the disciplinary proceedings is given in section 5 of the Ordinance, which is that the competent authority shall pass an order in writing wherein charges and statement of allegations have to be mentioned and the Inquiry Officer or the Committee is to be appointed. The Inquiry Officer or the Committee shall then communicate to the accused such charges and statement of allegations. On denial of charges and allegations by the accused the Inquiry Officer or the Committee shall hold inquiry during which accused shall be given chance to cross-examine the witnesses and to bring on record his defence, if any. Thereafter, second show-cause notice of the proposed penalty has to be given to the appellant along with copy of the inquiry report. This is to be followed by appropriate penalty by the competent authority. Under section 5(4) of the Removal Ordinance, 2000, the competent authority is empowered to dispense with the inquiry under subsection (1), if it is in possession of sufficient documentary evidence against the accused or for the reasons record in writing, it is satisfied that there is no need of holding an inquiry.

12. The two inquiries held against the appellant can only be termed as preliminary inquiries for the reasons that these were not held after issuing to the appellant any charge-sheet/statement of allegations nor after the show-cause notice issued to him. As a matter of fact there is nothing on record to show that the competent authority had passed any order wherein charges/allegations against the appellant had been specified. A perusal of the first preliminary inquiry (held by Raja Nowsherwan) was, in a way, favourable to the appellant, but no action on it was taken and rightly had been done so as the show-cause notice was issued by an incompetent person. The second preliminary inquiry by the Inquiry Committee was held in the absence of charges and statement of allegations recorded by the competent authority. The first preliminary inquiry, as per statement in the written comments, was infructuous. No reason had been assigned in the office order, dated 25-8-2001 whereby Inquiry Committee of three officers was constituted under the orders of the competent authority. In this office order charges and allegations against the appellant were not specifically mentioned. However, inquiry was held on the basis of the earlier statements of the appellant and others and their statements recorded in the form of question-answers by the Inquiry Committee. The appellant had denied the allegations contained in the two show-cause notices, but no chance of cross-examination was given to him. The show-cause notices contained serious allegations of fact, which, having been denied by the appellant, a chance of cross-examination of the witnesses/persons, who had levelled allegations against the appellant, had to be given to the appellant, as repeatedly held by the Honourable apex Court in a number of cases. Reliance is placed on 1997 TD (Service) 346; NLR 2003 (Service 1); 1980 SCMR 850; 1997 SCMR 1543; 2004 SCMR 316; 2004 SCMR 49; 2005 SCJ 455; 2003 PLC (CS) 314; 2003 SCMR 1126; 1997 PLC (CS) 873; 1993 SCMR 683 and 1440; 1996 PLC (CS) 868; PLD 1994 SC 22; 1985 PLC (CS) 219 and 245; 1990 PLC (CS) 745; 2003 PLC (CS) 7; 2003 PLC (CS) 365; 2003 SCMR 256; 2004 SCMR 294; PLJ 1999 TRC (Service) 374; 1992 SCMR 1789; PLD 1994 SC 222; 1996 SCMR 201; 1999 SCMR 841; PLD 1981 SC 176; 1987 SCMR 1562 and 1463; 2004 PLC (CS) S.O 1275; 2004 SCMR 1662; PLD 2002 SC 667; 1997 SCMR 1543 and 2005 SCMR 678. Since no chance

was given to the appellant to cross-examine the witnesses, the disciplinary proceedings against him stood vitiated and on such proceedings the appellant could not have been penalized legally. The Honourable Supreme Court has, repeatedly held that in case of major penalty, where allegations of fact are denied, a departmental inquiry is absolutely necessary giving the accused full chance of defending himself by means of cross-examination of the witnesses. Obviously, that had not been done by the Inquiry Officer or Inquiry Committee. Regular inquiry, which had to be followed by a charge-sheet, was not dispensed with in the two show-cause notices and no reason for that was mentioned therein.

13. So far as inquiry held at the headquarters by Messrs Ateeq Ahmed and Pervez Akhtar is concerned, its report or record is not available on the record of the appeal. There is only a reference to the facts of the fact-finding inquiry of the said committee received vide letter dated 9-9-2000, was forwarded to Abdullah Mahesar, General Manager (Sindh), NHA, Karachi for comments, vide Member Highways' letter dated 7-11-2000, and in response to that fact-finding report, the said General Manager Sindh recommended blacklisting of the contractor Messrs ABC and forfeiture of their performance security, vide letter dated 22-11-2000. It has transpired from the record that such letter was not received at the NHA, Headquarters. The appellant had denied any knowledge about the letter of the Inquiry Committee comprising Ateeq Ahmed and Pervez Akhtar. In view of such denial, the respondents were required to prove the fact that the appellant was in the knowledge of the inquiry in question. However, under clause (a) of the conclusion of the Inquiry Committee (comprising three officers), reproduced above, clearly shows that the name of the appellant was not amongst the four persons, mentioned therein (viz. Syed Raza Hameed Zaidi, Munir Ahmed Memon, Pir Bux Langah and Nawab Ali Kalwar), who had willfully concealed from the new G.M. Mian Abdul Haq the facts of the Inquiry Committee comprising Ateeq Ahmed and Pervez Akhtar, constituted by NHA, Headquarters. Such conclusion of the Inquiry Committee had rendered as redundant allegation "a" of the show-cause notice, dated 27-9-2001. There remained against the appellant the allegations of (i) extending undue favour to the contractor, (ii) convincing Deputy Director (Accounts) Pir Bux Langah and Assistant Director (Accounts) Nawab Ali Kalwar to process case of payment of the contractor of 4th and final bill and release of bank guarantee and (iii) not to bring the matter of inquiry to the notice of the new G.M. (These allegations have been mentioned in allegation "b" of the second show-cause notice). For proving these allegations as also other allegations, the appellant was required to be given a chance to cross-examine the General Manager, Sindh, Abdullah Mahesar, General Manager, Sindh Mian Abdul. Haq, Deputy Director (Accounts) Pir Bux Langah, Assistant Director (Accounts) Nawab Ali Kalwar Mian Mumtaz Ali, representative of Messrs ABC and others, but that was not done. The reason for not

allowing an opportunity of cross-examination of the witnesses, as given in the written comments, was the alleged confession of the appellant that he had reproduced the new noting sheet in place of missing noting sheet of the said contract and having directly submitted it to the Deputy Director (Accounts) for payment. Surely, the appellant had not admitted to have seen or to have removed the previous noting sheet and his explanation in the inquiry to the effect that he had done so on the insistence of the Accounts Department (i.e. Deputy Director Muneer Ahmed and Assistant Director Nawab Ali Kalwar), who had allegedly given him to understand that the payment had already been approved by former G.M. Sindh (Abdullah Mahesar). Such facts could have been elicited only by means of cross-examination of the said Deputy Director and Assistant Director (Accounts). The statement of Pir Bux and Mumtaz Ali against the appellant were also to be subjected to cross-examination by the appellant for finding out the truth of the allegations against the appellant, that was also not done. The alleged admission of the appellant cannot be called his confession. The facts evident from the inquiry reports (parts whereof were produced by the respondents) to establish that the appellant had sent new noting in place of the earlier noting directly to the Deputy Director (Accounts), but by such an action he was not shown to have violated any rule or law, but even any person, he had violated the practice in vogue (para.5 of the

written comments). Now violating the practice in vogue, whereby no loss was caused to the respondent NHA and wrongful gain to the appellant, who had admittedly withholding 10% amount from the payment of the 4th bill of Messrs ABC, no major penalty of dismissal or any penalty whatsoever could have been imposed on the appellant without giving him a chance of cross-examination the relevant witnesses. It appears from the record that the respondents were not sure what allegations had to be levelled against the appellant which is evident from the modification of the charges of the first show-cause notice by second show-cause notice, issued to the appellant after the second preliminary inquiry by the committee of three officers.

14. From the above discussion of the material on record it is evident that the respondents had not drawn the disciplinary proceedings against the appellant in accordance with law. Over and above all this, the respondents had not given any satisfactory reply to the objections about the competent authority. The definition of "competent authority" given under section 2(aa) of Ordinance, 2000 is as under:

"Competent Authority" means the Chief Executive and where, in relation to any person or class of persons, the Chief Executive authorize any officer or authority, not being inferior in rank to the appointing authority prescribed for the post held by the person against whom action is proposed to be taken, to exercise the powers of competent authority under this Ordinance, that officer or authority, and, in relation to an employee of a Court or Tribunal functioning under the Federal Government, the appointing authority or the Chairman or Presiding Officer of the Court or the Tribunal."

So far as the appointing authority is concerned, we have to refer to Rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 whereby sub-rule (2) for the post of BPS-17 to 19, Establishment Secretary is the appointing authority, but as per notification of the Cabinet Secretariat (Establishment Division) dated 27-5-2000 the officers authorized to exercise power of the competent authority under section 3 of the Ordinance, 2000 shown in Column 2 of the table are as under: -

Table No.1

For persons employed in Federal Secretariat or serving in a post, or belonging to a service, group or cadre, administratively controller by a Ministry or Division.

S. No.	Class of person	Officer authorized to exercise
1	2	3
1.	Holders of posts in BS-20 and above	Chief Executive of Pakistan.
2.	Holders of posts in BS-16-19	Secretary of the concerned Ministry/Division.
3.	Holders of posts in BS-1-15	An officer not below the appointing authority to be notified by the Secretary of the Ministry, Division concerned.

Table No.II

For persons employed in an Attached Department or a Subordinate Office of the Federal Government.

S.No.	Glass of person	Officer authorized to exercise the powers of competent authority
1	2	3

1.	Holders of posts in BS-20 and above	Chief Executive of Pakistan.
2.	Holders of posts in BS-16-19	Head of the Department/Subordinate office
3.	Holders of posts in BS-1-15	An officer not below the appointing authority to be authorized by the Head of the Department/Subordinate Officer.

Table No.III

For persons in Corporation service.

S.No.	Class of person	Officer authorized to exercise the powers of competent authority
1	2	3
1.	Holders of posts in BS-20 and above and equivalent	Chief Executive of Pakistan.
2.	Holders of posts in BS-16-19 and equivalent	Managing Director/Chief Executive Officer of the Organization by whatever name called,
3.	Holders of posts in BS-1-15 and equivalent	An officer not below the appointing authority to be authorized by the Chief Executive Officer of the Corporation.

The appellant belonged to the Attached Department of the Federal Government; hence; under Table-II, the competent authority in his case would be Head of the Department viz. Chairman, NHA. However, by notification of Government of Pakistan, Cabinet Secretariat, Establishment Division dated 17-6-2000, the above mentioned Table-II was amended as under:

Table No.II

For persons employed in an Attached Department or a Subordinate Office of the Federal Government.

S.No.	Class of person	Officer authorized to exercise
1	2	3
1.	Holders of posts in BS-20 and above	Chief Executive of Pakistan.
2.	Holders of Posts in BS-17-19	Secretary of the Ministry of Division concerned.
3.	Holders of posts in BS-16	Head of Department or Head of Subordinate Office.
4.	Holders of posts in BS-1-15	An Officer not below the appointing authority to be authorized by the Head of Department or Head of Subordinate Office.

In view of the above amendment by means of S.R.O.-411, Secretary of the Ministry or Division concerned was the Authorized Officer i.e. the competent authority under section 2-A of the Removal Ordinance, 2000 hence, the two show-cause notices dated 6-7-2001 and 27-9-2001 (issued by the Director-General NHA and Chairman NHA respectively) and the impugned order, dated 29-3-2002 (issued by the Chairman NHA) of dismissal of the appellant from service having not been issued by the Secretary of the Ministry or the Division, were without any doubt void and nullity in the eyes of law and these were, therefore, liable to be set aside.

15. Sufficient unto us is the above discussion of ours of the factual as well as legal position of the disciplinary proceedings against, the appellant to come to the unflinching conclusion that the impugned order of dismissal of the appellant from service and the order of rejection of the department appeal of the appellant against his dismissal from service (without any cogent reasons) were illegal, void and nullity in the eyes of law; hence, the order of penalty of dismissal imposed upon the appellant cannot be sustained. Such order and the order of rejection of the departmental appeal are, therefore, set aside with direction to the respondents to reinstate the appellant in service from the date of his dismissal with all back-benefits for the period he was not gainfully employed elsewhere for which he shall submit an affidavit before the competent authority.

16. No order as to costs.

17. Copies of judgment be sent to the parties under registered cover and to the relevant quarters under Rule 21 of Service Tribunal (Procedure) Rules, 1974.

H.B.T./39/FST

Appeal allowed.

2008 S C M R 1369

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C. J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

NASEEB KHAN----Petitioner

Versus

DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS, LAHORE and another----
Respondents

Civil Petition for Leave to Appeal No.466 of 2008, decided on 26th May, 2008.

(On appeal from the judgment, dated 23-1-2008 passed by Federal Service Tribunal in Appeal No.397(R) of 2007).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

-----S. 5---Misconduct---Dismissal from service---Non-holding of departmental Enquiry---Violation of principles of natural justice---Effect---Held, in case of imposing a major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007 ref.

Abdul Rehman Siddiqui, Advocate Supreme Court with Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Qamar Zaman, Clerk, Litigation Branch for Respondents.

Date of hearing: 26th May, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J.--- Through instant petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, Naseeb Khan, petitioner, seeks leave against judgment, dated 23-1-2008 of learned Federal Service Tribunal, Islamabad, whereby appeal of the petitioner, challenging his dismissal from service, has been dismissed, in limine, being barred by time.

2. Precisely stated facts of the case as gathered from the record are, that petitioner joined service of respondent-Department as Junior Commercial Assistant Booking (BS-5) on 26-3-1998 and served

as such for 14 years. On 10-11-2001 due to demise of his wife, petitioner proceeded on leave. Petitioner was on leave when his father expired on 31-12-2001. According to the petitioner on 26-5-2002, he reported back but he was not allowed to resume duty and was issued a show-cause notice along with statement of allegations for remaining absent from duty without prior permission. The petitioner preferred representation/appeal which was rejected vide order, dated 13-5-2006. Feeling aggrieved, petitioner filed appeal before the Federal Service Tribunal, Islamabad which has been dismissed in limine, as stated above vide judgment impugned herein.

3. Mr. Abdur Rehman Siddiqui, learned Advocate, appearing for the petitioner argued that learned Tribunal has overlooked the settled law regarding limitation against a void order while dismissing petitioner's appeal as time-barred particularly when petitioner's departmental representation was not rejected on the question of limitation and that major penalty of dismissal from service has been imposed upon the petitioner without holding regular inquiry into the matter and without affording opportunity of defence to the petitioner.

4. We find substance in the submissions of learned counsel for the petitioner. It has been contemplated under section 5 of the Removal from Service (Special Powers) Ordinance, 2000 that in case of charge of misconduct as stipulated in section 3 of the Ordinance, a full fledged enquiry is to be conducted in order to give an opportunity to the civil servant to clarify his position. Section 5 of the Ordinance is reproduced below for facility sake:---

"Power to appoint an Inquiry Officer or Inquiry Committee.---(1) Subject to the provisions of subsection (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry officer or as the case may be, the Inquiry Committee shall---

(a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;

(b) require the accused within seven days from the day the charge is communicated to him to put in written defence;

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him;

(d) and hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the Inquiry Officer or as the case may be, the Inquiry Committee is satisfied that the accused is hampering, or attempting to hamper, the progress of the inquiry he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he, or it, deems proper in the interest of justice.

(3) The Inquiry Officer or as the case may be the Inquiry Committee shall submit his or its findings and recommendations to the competent authority within twenty-five days of the initiation of inquiry.

(4) The competent authority may dispense with the inquiry under subsection (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry.

(5) Where a person who has entered into plea bargaining under any law for the time being in force, and has returned the assets or gains acquired through corruption or corrupt practices voluntarily, the inquiry shall not be ordered:

Provided that show-cause notice shall be issued on the basis of such plea bargaining to such person informing of the action proposed to be taken against him and the grounds of such action requiring him to submit reply within fifteen days of the receipt of the notice. On receipt of the reply, the competent authority may pass such orders as it may deem fit."

5. In case of imposing a major penalty, the principle of natural justice requires that a regular enquiry is to be conducted in the matter and opportunity of defence and personal hearing is to be provided to the civil servant proceeded against as held by this Court in the case of *Pakistan International Airlines Corporation v. Ms. Shaista Naheed* 2004 SCMR 316 and *Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood* 2003 SCMR 2007.

6. Keeping in view the facts and circumstances of the case, we find that petitioner has been condemned unheard and major penalty of dismissal from service has been imposed upon him without adopting the required and mandatory procedure, resulting in manifest injustice.

7. In view of the above, this petition is converted into appeal and allowed accordingly. The impugned judgment of the Service Tribunal, Islamabad, is set aside and petitioner is reinstated in service. However, his intervening period shall be treated as leave without pay. The department, may conduct a regular inquiry into the charges against the appellant, if so desired. No order as to costs.

H.B.T./N-9/SC

Order accordingly.

2005 S C M R 1814

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Saiyed Saeed Ashhad, JJ

NAZIR AHMAD PANHWAR---Petitioner

Versus

GOVERNMENT OF SINDH through Chief Secretary, Sindh and others---Respondents

Civil Petition No.720-K of 2003, decided on 30th August, 2005.

(On appeal from the judgment, dated 24-7-2003 passed by Sindh Service Tribunal, Karachi in Appeal No.26 of 2000).

(a) Locus Poenitentiae---

---Principle of---Concept---Applicability---Scope---Concept of locus poenitentiae is a power to recede till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and a past' and closed transaction---If the order was illegal then perpetual right could not be gained on the basis of such an illegal order---Principle of locus poenitentiae can be invoked only in respect of an order which is legal and not in respect of an order which is contrary to and in contravention of any provision of law or the rules made thereunder or a settled provision of law---Said principle would be applicable in respect of an order passed by an authority who was competent to pass an order in accordance with law and the order so passed was not in violation or contravention of any law and/or rules made thereunder.

The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin PLD 1992 SC 207 and Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others 2000 SCMR 907 ref.

(b) Maxim: Audi alteram partem---

---Applicability---Limitations---Right of personal hearing to a person against whom an adverse order is to be made is to be equated with fundamental right and an adverse order made without affording him an opportunity of personal hearing is to be treated as a void order---Application of said principle has its limitations---Where the person against whom an adverse order is made has acted illegally and in violation of law for obtaining illegal gains and benefits through an order obtained with mala fide intention, influence, pressure and ulterior motive then the authority would be competent to rescind/withdraw/cancel such order without affording an opportunity of personal hearing to the affected party---Said principle though was always deemed to be embedded in the statute and even if there was no such specific or express provision, it would be deemed to be one of the parts of the statute because no adverse action can be taken against a person without providing right of hearing to him---Principle of audi alteram partem, at the same time, could not be treated to be of universal nature because before invoking /applying the said principle one had

to specify that the person against whom action was contemplated to be taken prima facie had a vested right to defend the action and in those cases where the claimant had no basis or entitlement in his favour he would not be entitled to protection of the principles of natural justice.

Mrs. Anisa Rehman v. P.I.A.C. and another 1994 SCMR 2234; Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others 2000 SCMR 907 and Abdul Waheed and another v. Secretary, Ministry of Culture, Sports, Tourism and Youth Affairs, Islamabad and another 2002 SCMR 769 ref.

(c) Sindh Civil Servants Act (XIV of 1973)---

----S. 2(b)---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, R.7---Constitution of Pakistan (1973), Art.212(3)---Services of the person working in BS-17 were placed at the disposal of Provincial Department for his absorption against the post in BS-19 in a corporation---Said order was given effect to and the person assumed the charge in BS-19---Absorption of said person however, was cancelled and he was repatriated to the parent department---Parent department was under the process of being disbanded as such he was absorbed in another department in BS-17---Notification by which his absorption was cancelled and he was repatriated to the parent department was assailed by the employee by way of departmental appeal which was not decided within 90 days, therefore, he filed appeal before the Service Tribunal which was dismissed---Validity---Material on record established that post on which he was ordered to be absorbed was a cadre post and the same could not be filled in by a non-cadre officer meaning thereby that only an officer who belonged to a regular service and who was a civil servant as defined in Sindh Civil Servants Act, 1973 and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 could be posted, as such the order of his absorption in BS-19 was in violation of Rules and could not be treated as a valid and proper order---Contention of the employee that the order of his absorption in BS-19 having been acted upon, a vested right had been conferred on him to continue on that post in view of principle of locus poenitentiae, was misconceived---Petition for leave to appeal against order of the Service Tribunal was dismissed being without substance.

M.M. Aqil Awan, Advocate Supreme Court and Ms. Wajahat Niazi, Advocate-on-Record for Petitioner.

Dr. Qazi Khalid Ali, Additional Advocate-General, Sindh and Akhlaq Ahmad Siddiqui, Advocate-on-Record for Respondents Nos.1 and 2.

Nemo for Respondents Nos.3 and 4.

Date of hearing: 30th August, 2005.

JUDGMENT

SAIYED SAEED ASHHAD, J.-----The petitioner vide this civil petition for leave to appeal has assailed the order of Sindh Service Tribunal, Karachi dated 24-7-2003 dismissing Appeal No.26 of 2000 filed by him. This appeal was filed by the petitioner against the order dated 23-8-1999 whereby his absorption as Director (Administration) in BPS-19 of Sindh Seed Corporation vide order, dated 24-11-1997 was cancelled and he was repatriated to Sindh Sugar Corporation.

2. The facts requisite for disposal of this petition are that the petitioner was appointed in Sindh Sugar

Corporation on 17-12-1977 as Chief (Recovery) in BS-17. On 8-11-1995 he was made Acting General Manager in Thatta Sugar Mills in his own pay and scale. On 21-4-1996 he was posted as Acting General Manager, Dadu Sugar Mill, also in his own pay and scale. Subsequently, on 13-3-1997 he was posted as Deputy Secretary on deputation in the Chief Minister Secretariat. On 24-11-1997 his services were placed at the disposal of Agriculture Department for his absorption against the post of Director (Adorn.) in BS-19 in Sindh Sugar Corporation (hereinafter referred to as the "SSC"). This order was given effect to and he assumed the charge of Director (Admn.) in SSC. However, vide order dated 23-8-1999 his absorption was cancelled and he was repatriated to Sindh Sugar Corporation. As SSC was under the process of being disbanded as such he was absorbed as District Zakat Officer (BS-17) in the Zakat and Ushar Department on 16-11-1999. Notification dated 23-8-1999 by which his absorption was cancelled and he was repatriated to SSC was assailed by him by way of departmental appeal. The said appeal was not decided within 90 days, therefore, he filed appeal before the Sindh Service Tribunal. The appeal of the petitioner was dismissed by the Sindh Service Tribunal by impugned judgment, dated 24-7-2003. Hence this petition for leave to appeal.

3. We have heard Mr. M.M. Aqil Awan, Advocate Supreme Court on behalf of petitioner and Dr. Qazi Khalid Ali, Additional Advocate-General, Sindh on behalf of the respondents.

4. Mr. Aqil Awan vehemently attacked the order of the Tribunal and submitted that it had completely failed to take note of the fact that the order/notification dated 23-8-1999 was passed or issued without giving an opportunity to the petitioner for explaining his view point, before taking action of cancellation of his, absorption; his repatriation to his parent corporation/department namely Sindh Sugar Corporation; and reverting him to BPS-17 whereas by virtue of his posting as Director (Admn.) in SSC he was working in BPS-19. He further submitted that order, dated 24-11-1997 ordering his absorption and posting as Director (Admn.) in SSC was acted upon and he performed duties of Director (Administration) for about one year and 9 months, as a result of which he had acquired a vested right to continue to serve as Director Administration as well as to BS-19 and could not have been legally reverted to his original post in a lower scale. He further submitted that order dated 23-8-1999, in view of the settled principle that an order without a show-cause notice or without providing an opportunity of hearing to the person who would be affected by the same is to be treated as an order in violation of fundamental right and would be a void order. In support of his above contention he placed reliance on the case of Mrs. Anisa Rehman v. P.I.A.C. and another 1994 SCMR 2234.

5. Dr. Qazi Khalid Ali, learned Additional Advocate-General on the other hand supported the order of the Tribunal and submitted that the order, dated 24-11-1997 was an illegal order which was procured by the petitioner due to the influence and favourable position which he was enjoying on account of his posting in the Chief Minister's Secretariat as was claimed by the respondent in the written statement filed by Mr. Aijaz Hussain Kazi, Secretary (Services) Services and General Administration Department, Government of Sindh. He further submitted that the order of absorption of the petitioner as Director (Administration) in Sindh Seed Corporation was in contravention of the Rules as it was a cadre post and could not be filled in by an officer other than a civil servant as defined under section 2(b) of Sindh Civil Servants Act, 1973 as firstly he was not a civil servant and secondly at the relevant time neither he was rendered surplus nor the post held by him in corporation was abolished.

6. We have considered the arguments of the learned counsel of the parties and have perused the material on record specifically the judgment of the Tribunal. It transpires that during the course of his service the petitioner had been enjoying some extra favour and support. He being an officer of BPS-17 was allowed on two occasions to serve as Acting General Manager of Thatta Sugar Mills and

Dadu Sugar Mills in his own pay and scale. This clearly established that the petitioner on no occasion was placed in BS-18 and even when performing duties as AGM he continued to draw salary/emolument in BS-17. No doubt that he was subsequently posted on deputation as Deputy Secretary in Chief Minister's Secretariat but again there is nothing on record from which it can be gathered that he was promoted/placed in BPS-18. This fact had not been specifically urged by the petitioner at any stage during the course either in his departmental appeal or in his appeal before the Service Tribunal. It was the Tribunal, which had presumed that as Deputy Secretary in Chief Minister's Secretariat he would be working in BPS-18, which presumption is not substantiated by any material on record. From the material brought on record the respondents have succeeded in establishing that post of Director (Administration) was a cadre post and could not be filled in by a non-cadre officer meaning thereby that only an officer who belonged to a regular service and who was a civil servant as defined in Sindh Civil Servants Act, 1973 and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 could be posted. As such the order, dated 24-11-1997 was in violation of the Rules and could not be treated as a valid and proper order. The contention on behalf of the petitioner that the order, dated 24-11-1997 had been acted upon, therefore, a vested right had been conferred on the petitioner to continue on the post of Director, (Administration) in Sindh Seed Corporation, in view of the principle of locus poenitentiae is misconceived as this principle can be invoked only in respect of an order which is legal and not in respect of an order which is contrary to and in contravention of any provision of law or the rules made thereunder or a settled provision of law. If any authority is required in support of above proposition the same is available from the judgments in the cases of (i) The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin PLD 1992 SC 207 and (ii) Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, . Karachi and 3 others 2000 SCMR 907. In both the above referred cases this Court had categorically stated that principle of locus poenitentiae would be applicable in respect of an order passed by an authority who was competent to pass an order in accordance with B law and that the order so passed was not in violation or contravention of any law and/or rules made thereunder. In the case of Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others (supra) this Court categorically pronounced that the concept of locus poenitentiae is the power to recede till a decisive step is taken but it is not a principle of law that order once passed become irrevocable and a past C and closed transaction. It was also laid down that if the order was illegal then perpetual right could not be gained on the basis of such an illegal order.

7. Great emphasis was laid by Mr. Aqil Awan on denial of the right of personal hearing to the petitioner before passing/issuing the order/notification dated 23-8-1999 and it was submitted that denial of the right of hearing amounted to violation of fundamental right as held by this Court in the case of Mrs. Anisa Rehman v. P.I.A.C. and another (supra) rendering the same as a void order. He further submitted that as the order/notification dated 23-8-1999 was void the petitioner's cancellation of absorption; his reversion to his original post; and refusal to allow him BS-19 would have no legal sanction necessitating a presumption that he continues to hold the post of Director Administration in BS-19 in Sindh Seed Corporation.

8. This contention is misconceived. There can be no denial that right of personal hearing to a person against whom an adverse order is to be made to be equated with fundamental right and an adverse order made without affording him an opportunity of personal hearing is to be treated as a void order. However, application of this principle has its limitations. In cases where the person against whom an adverse order is made has acted illegally and in violation of law for obtaining illegal gains and benefits through an order obtained with mala fide intention, influence, pressure and ulterior motive then the authority would be competent to rescind/withdraw/cancel such order without affording an opportunity

of personal hearing to the affected party. This Court in the case of Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others (supra) while dilating upon the application of maxim audi alteram partem observed that though this principle was always deemed to be embedded in the statute and even if there was no such specific or express provision it would be deemed to be one of the parts of the statute because no adverse action can be taken against a person without providing right of hearing to him. It was further observed that at the same time this principle could not be treated to be of universal nature because before E invoking/ applying this principle one had to specify that the person against whom action was contemplated to be taken prima facie had a vested right to defend the action and in those cases where the claimant had no basis or entitlement in his favour he would not be entitled for protection of the principles of natural justice. The above observations/ views were reiterated by this Court in the case of Abdul Waheed and another v. Secretary, Ministry of Culture, Sports, Tourism and Youth Affairs, Islamabad and another 2002 SCMR 769. In this case the Officiating Authority had promoted some lower Division Clerks to some higher posts without following the procedure prescribed for appointment of civil servants to such posts. When the above irregularity came to the notice of the Competent Authority, the said promotions were cancelled and the concerned civil servants were reverted to their original posts without providing them opportunity of hearing. The concerned civil servants agitated their cases before the department and the Service Tribunal wherein they raised the contention of denial of right of personal hearing; being violative of the fundamental right rendered the order of reversion as illegal and void did not find favour. The matter came before this Court and this Court while maintaining the judgment of the Service Tribunal categorically pronounced that the promotions/appointments made by the Officiating Authority without following the prescribed procedure would not be legal and consequently the petitioners would neither have any right to hold such posts nor were entitled to the salaries and other benefits attached to the said posts. Then reversion to the lower post in their own salary and benefits was not found to be suffering from any illegality or violative of any rule and principle. In view of the categoric pronouncement to the above effect this contention has no force.

9. For the foregoing facts, reasons and discussion this petition for leave to appeal is found to be without any substance and does not merit consideration. Accordingly, it stands dismissed and leave to appeal is refused.

M.B.A./N-56/S

Petition dismissed.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No 34/2012

Date of Institution... 12.01.2012

Date of decision... 03.10.2017

Yousaf Khan, SI Police Station Kanju, District Swat. ... (Appellant)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. IMDADULLAH,
Advocate

... For appellant.

MR. MUHAMMAD ZUBAIR,
District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was proceeded against departmentally for the charge of absence and cowardice in the year, 2007. He was awarded the penalty of dismissal from service. That order was set aside by this Tribunal on 23.10.2008 with the direction to conduct denovo enquiry, if so desired, by the department. The department thereafter served another charge sheet and statement of allegations on 16.01.2009 and finally passed the impugned order on 3.10.2009. Against this order, the appellant filed a departmental appeal on 24.11.2009 which was not

responded to and thereafter the present appeal. In the impugned order, the appellant has been awarded the minor penalty of forfeiture of two years service


ARGUMENTS

3. The learned counsel for the appellant argued that the competent authority has taken the matter very casually and has only endorsed his order on the enquiry report. That no personal hearing was afforded to the appellant. That the minor penalty of forfeiture is not mentioned in the RSO, 2000. He argued that personal hearing before passing of impugned order is a vested right and that the competent authority should have written a speaking order. There is no statement of accused recorded by the enquiry officer. The learned counsel for the appellant further argued that though he filed the present appeal after expiry of period of limitation but he has also submitted an application for condonation of delay. He argued that according to judgments reported as 2004-PLC(C.S)1014 and 2003-PLC(C.S) 769 limitation is a technicality and should not become a hurdle in way of substantial justice. He further argued that the impugned order is a void and illegal order therefore, no limitation shall run against the appellant.

4. On the other hand the learned District Attorney argued that the order of the competent authority is proper. That under Rule 8 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 there is no compulsion to write a speaking order and it is the power of the authority to pass any order which he deems appropriate. That the statement of the accused has been recorded by the enquiry officer on 27.08.2009.

CONCLUSION

5. The objection of the learned counsel for the appellant regarding imposition of penalty under the Ordinance is misconceived because the Ordinance



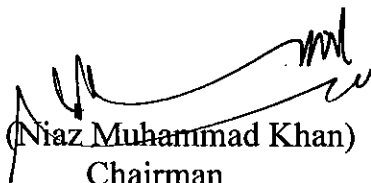
does not provide its own penalty and does not repeal the Khyber Pakhtunkhwa Police Rules, 1975. The Ordinance has been given only overriding effect under Section 11. The departmental appeal has been filed after the expiry of 15 days but the appellant has not shown in the departmental appeal or in the memorandum of appeal that when did he come to know about the impugned order. The learned counsel for the appellant shifted this burden on the department that it was the department to have had shown that when was the order communicated. Leaving aside this issue, the very service appeal is time barred for which the appellant had filed an application for condonation of delay. Going through the application for condonation of delay there is no plausible cause shown by the appellant which could be formed the basis of condonation of delay. The judgments relied upon by the learned counsel for the appellant in this respect are not attracted as in those judgments the circumstances were different from the present appeal. These judgments could not be interpreted in the way, the learned counsel for the appellant has done. The reason is that if law of limitation is technicality and if used as umbrella/sweeping principle then the Limitation Act would lose its utility and in every case which it is made out on merit, the limitation would be not counted.

6. Now we are to see whether the impugned order was a void order or not. Mere writing an order over the enquiry report cannot be termed as void on this score. The learned counsel for the appellant has not been able to tell that when any order is devoid of reasons then it would tantamount to void order. The learned counsel for the appellant referred to Section 24-A of the General Clauses Act, 1897 in support of his contention that every order should be with reasons but this section does not give the consequences of failure to give reasons which means that this section is directory and not mandatory. Secondly Section 24-A pertains to

Federal Statutes and not Provincial Statute. No *pari materia* section has been introduced in the Provincial General Clauses Act. In absence of such specific law, the principle of natural justice shall apply which provides for due process. But by applying principle of natural justice we cannot hold any order without reasons to be a void order. The learned counsel for the appellant has not shown any precedent on this point that such an order is a void order. In absence of any void order limitation shall run against the appellant.

7. For the foregoing reason, the present appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member


(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
03.10.2017

03.05.2017

Appellant alongwith his counsel present and submitted Wakalatnama. Mr. Khawas Khan, S.I (Legal) with Amir Qadar, Deputy Attorney for the respondents also present. Due to incomplete bench arguments could not be heard. To come up for arguments on 04.09.2017 before D.B at Camp Court Swat.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat

05.09.2017

Since 4th September, 2017 has been declared as public holiday on account of Eidul Azha, therefore, case is adjourned to 03.10.2017 for the same at camp court, Swat. Notices be issued to the parties for the date fixed.



Chairman

Camp court, Swat.

3.10.2017

Counsel for the appellant and Mr. Muhammad Zubair, District Attorney alongwith Khawas Khan for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.



Member



Chairman
Camp Court, Swat.

ANNOUNCED
3.10.2017

15.04.2016

Mr. Sajid Amin, Advocate for appellant and Mr. Imranullah, Inspector (legal) alongwith Mr. Usman Ghani, Sr.GP for respondents present. Learned Sr.GP submitted that the case was assigned to Mr. Ziaullah, GP who is on leave today therefore arguments could not be heard. The appeal pertains to the territorial jurisdiction of Malakand Division as such the same is fixed for arguments on 6.9.2016 at Camp Court Swat.



Member


Member

06.09.2016

None present for the appellant. Mr. Muhammad Zubair, Sr.GP alongwith Khawas Khan, SI (Legal) for the respondents present. According to preceding order sheet dated 15.04.2016 the Division Bench at provincial headquarter had transferred the appeal to this Bench as the same pertains to territorial limits of Malakand Division. Since the case pertains to territorial limits of Malakand Division, therefore, the same to come up for final hearing on 02.1.2017 before the D.B at camp court, Swat. Notice be issued to appellant and his counsel for the date fixed.



Member


Chairman
Camp Court, Swat

02.1.2017

Appellant in person and Mr. Muhammad Imran S.I (Legal) alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. To come up for final hearing on 03.05.2017 before D.B at camp court, Swat.


Member


Chairman
Camp court, Swat

09.12.2014

No one is present on behalf of the appellant. Mr. Khawas Khan S I (Legal) for respondents with Mr. Muhammad Adeel Butt, AAG present. The Tribunal is incomplete. To come up for further proceedings on 26.05.2015.


Reader.


26.05.2015

Clerk of counsel for the appellant and Addl: AG for the respondents present. Clerk of counsel for the appellant requested for adjournment due to general strike of the Bar. To come up for arguments on 30.10.2015 before D.B


Member

30.10.2015

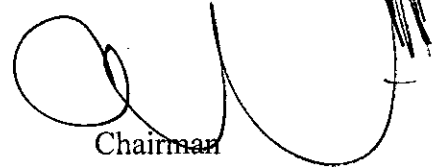
Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to shortage of time. To come up for arguments on 15-4-2016


Member


Member

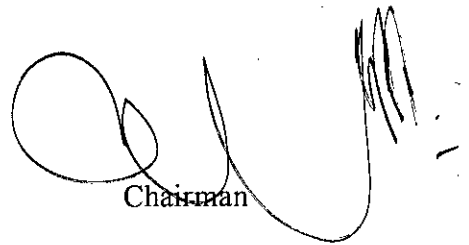
15.8.2013

Appellant with counsel and Mr. Khawas Khan, SI (Legal) for respondents with Mr. Usman Ghani, Sr. GP present. At the outset of the arguments, the learned Sr. GP requested for time to file reply to application for condonation of delay, which has not been filed on behalf of the respondents so far. Reply to application for condonation of delay be filed in the meantime, with copy for the opposite side for arguments on 6.2.2014.


Chairman

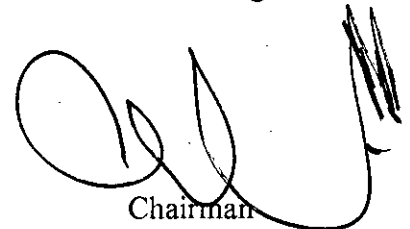
6.2.2014

Mr. Iftikhar Ali, Advocate on behalf of counsel for the appellant and AAG for the respondents present. Arguments could not be heard, and request for adjournment made on behalf of the appellant due to pre-occupation of his counsel in the Supreme Court of Pakistan, Islamabad. To come up for arguments on 13.6.2014.


Chairman

13.6.2014

Counsel for the appellant and Mr. Khawas Khan, SI (Legal) for respondents with AAG present. Reply to application for condonation of delay has not been filed on behalf of the respondents so far despite a clear direction to that effect in the order sheet dated 15.8.2013. A last chance is given for reply to application for condonation of delay, otherwise adverse presumption will be drawn against the respondents, and arguments heard in the light of available record on 9.12.2014.


Chairman

17/11/2012

02.11.2012

Appellant with Mr. Sajid Amin, Advocate and AAG for the respondents present. Neither written reply received nor representative of the respondents, namely, Khawas Khan, S.I(legal); who was present on the previous date, is present today. However, the learned AAG requested for time. To come up for written reply/comments on 3.1.2013. Notice to the representative of the respondents should also be issued for the date fixed.

03.01.2013

03.01.2013.

Appellant (Mr. Sajid Amin and Mr. Khawas Khan, S.I(legal)) with Mr. Shakerullah, GP for the respondents present. Written reply received on behalf of the respondents, copy whereof is handed over to the appellant for rejoinder on 22.03.2013.

Member
Member

Chairman

20-8-8018

22.3.2013

Appellant with counsel (Mr. Sajid Amin, Advocate) and AAG for the respondents present. Rejoinder/replication on behalf of the appellant received; copy whereof is handed over to learned AAG for arguments on 15.8.2013.

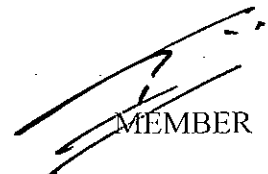
Chairman

Appeal No. 34/2012.

06 26.6.2012

Counsel for the appellant and Mr. Khawas Khan, S.I (legal) for respondents with AAG present. Preliminary arguments heard. The learned counsel for the appellant argued that the appellant was reinstated into service vide this Tribunal judgment dated 23.10.2008 in appeal NO.602/2008. Thereafter, the respondent-department conducted partial inquiry and awarded the appellant forfeiture of two years qualifying service with immediate effect, as punishment. In this regard no proper order was issued to the appellant. The DPO (Respondent NO.3) had issued these orders on the face of inquiry report at page 19. The learned counsel further argued that as per orders of the Tribunal the appellant was not reinstated in service, rather he was issued charge sheet and statement of allegations on 15.01.2009. Later on, on the application of the appellant, he was reinstated on 07.04.2009, and after inquiry the above punishment was awarded without any intimation to the appellant in writing. In this regard, the learned counsel relied on 1993 PLC (CS) 308 and 2011 SCMR 544 regarding question of limitation and minor punishment. The learned AAG admitted that there are certain irregularities in this case. The record produced by the respondents did not contain any proper order issued to the appellant for award of the punishment. Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections. Process fee and security be deposited within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 30-8-2012.

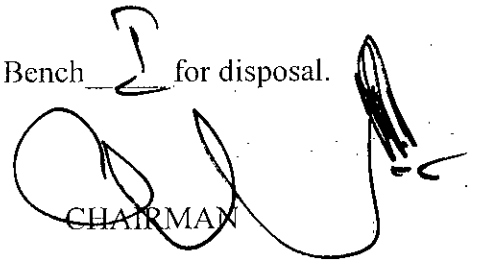
Appellant deposited Security of Process fee Rs 1800/- with receipt is attached file


MEMBER

7.


26.06.2012

This case be put up before Final Bench 2 for disposal.


CHAIRMAN

30-8-12:

Appellant with counsel & Khawas Khan, S.I (legal) for respondents present. The worthy chairman is on tour to A/Abud. To come up for written reply/comments on 02-11-2012.


Randa

4.

2.4.2012.


Counsel for the appellant present. In order to assist the court, pre-admission notice be issued to the respondents as well as learned AAG. To come up for preliminary hearing on 15.5.2012.


MEMBER

5.

25.5.2012


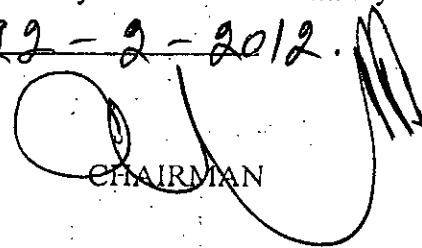


Counsel for the appellant, and Khawas Khan S.I for the respondents present. The latter requested for adjournment. Case adjourned to 26.6.2012 for reply/ preliminary hearing.


MEMBER

Form- A
FORM OF ORDER SHEET

Court of -----

Case No. 34/2012

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1		<p style="text-align: center;">The appeal of Mr. Mousaf Khan S.I Police submitted today by Mr. Ijaz Anwar 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	19-1-2012	<p style="text-align: center;">This case is entrusted to Primary Bench for Preliminary Hearing to be put up there on 22-2-2012.</p> <p style="text-align: right;"> CHAIRMAN</p>
3.	22.2.2012	<p style="text-align: center;">Counsel for the appellant (Mr.Sajid Amin, Advocate) present and requested for adjournment due to his pre-occupation in the High Court. To come up for preliminary hearing on 6.3.2012.</p> <p style="text-align: right;"> MEMBER</p>
3.	6.3.2012	<p style="text-align: center;">Counsel for the appellant present and requested for time. To come up for preliminary hearing on 2-2 2012.</p> <p style="text-align: right;"> MEMBER</p>

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No 34 /2012

Yousaf Khan SI, Police Station Kanju District Swat.

(Appellant)

VERSUS

Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

INDEX

S. NO.	Description of documents	Annexure	Page No
1	Memo of Appeal		1-4
2	Application for condonation		5-6
3	Judgment and Order dated 23-10-2008	'A'	7-11
4	Application dated 15.1.2009, Charge Sheet, 23.2.2009 & fresh charge sheet	'B', 'C', 'D' & E	12-17
5	Inquiry Report	'F'	18-19
5	Departmental Appeal	'G'	20-21
6	Vakalatnama		

Appellant

Through



IJAZ ANWAR

Advocate Peshawar

FR-3 fourth floor Bilour Plaza

Saddar road Peshawar Cantt

03339107225(091) 5272054

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 34 /2012

[Redacted]
[Redacted] 40
[Redacted] 12/01/12

Yousaf Khan SI, Police Station Kanju District Swat.

(Appellant)

VERSUS

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
3. District Police Officer Swat.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Section 10 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 against the Order dated 03-10-2009 whereby the appellant was awarded the penalty of "Forfeiture of 02 years qualifying service" with immediate effect, against which the Departmental Appeal dated 24-11-2009 has not been responded till date.

Prayer in Appeal: -

On acceptance of this appeal the Impugned Order dated 03-10-2009 may please be set-aside with all consequential benefits.

Respectfully Submitted:

1. That the appellant was appointed as Foot Constable in the Police Department on 9-01-1978, he successfully completed the Police Training Course and during the course of his service he was promoted as ASI. The appellant while posted at police Lines Swat felt ill and was taken to his home, later he was medically examined and the Medical Officer on duty advised him complete bed rest due to the nature of the disease. He accordingly referred the medical slip to his immediate officer. However, the Department ignored the same and proceeded exparte against the appellant and vide order dated 17-12-2007 awarded him the major penalty the dismissal from service.

بیان آذانِ یوسف علیہ السلام کی توجیہ و تفسیر

بیان کیا کہ یہ سب اجازت اور رفاہ عند الفطر
منانے کی عمر میں سے بعد خود کیا گیا۔ اس دوران بیمار ہوا
اور علاج کی عمر میں ہسپتال جائے گا اور اس کے بعد
نہ علاج ہو کر رہے گا یہی ارادہ کہہ کر سفارش کی
علاج کی حالت میں وقتاً فوقتاً ہسپتال جانا پڑا
اور صابا ڈاکٹر صاحب نے ملائے تجویز کر کے بیوی
ارادہ کر کے عہدہ رات / سفارش کرنا تھا۔

میں ASI کے خلاف ریلوے عہدہ طاقری سے ریٹائر ہوئی۔ وہ
جس میں جو پتہ ہے (آئی)۔ تو پتہ ہے 2007.12.26 کو طاقری
کی عمر میں سے پولیس لائی آیا۔ تو اس کے بعد اس کے
میں اور اس کے بعد سے نکلا گیا۔ تم صاحب 2007.12.26 کو طاقری
ASI کو ملازمت سے DISMISSE کیا گیا ہے۔

عہدہ میں ASI کے دولہے کے مطابق صاحب ڈی۔ ڈی۔ ای۔ کی ملک
ملا کر ڈویژن کو اپیل کر کے بجائی ملازمت کو برقرار رکھے
صاحب ڈی۔ ڈی۔ ای۔ کی ملک سے من ASI کو اپیل REJECT
کیا گیا۔

میں ASI کے دولہے کے مطابق عدالت سروس ٹریبیونل لیتا رہا
اپنی دائرہ کے باقاعدہ CASE کی سماعت ہوئی۔ فائنل
عدالت نے من ASI کو ملازمت پر بحال کر کے حکم فرمایا۔
عدالت کے حکم کے خلاف عدالت سروس ٹریبیونل
سینا ور کے روٹی میں ملازمت پر بحالی کا حکم فرمایا۔
صاحب عالی! بوجہ بیماری میرا فز سوائے تھا۔ صحت بحال کرنے کی سچے قطعاً
تف اپیل میں۔ وہی میرا بیان ہے۔

یوسف علیہ السلام
جو کی میرا توجیہ
ASI PP Banni
27.08.2009

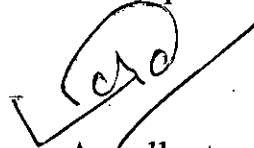
2. That the appellant filed service appeal No. 602 / 2008 in the Khyber Pakhtunkhwa Service Tribunal against his Dismissal Order and the Service Tribunal vide order dated 23-10-2008 accepted the appeal set aside the impugned order dated 17-12-2007 and reinstated the appellant in to service and also allowed the Department to proceed afresh against the appellant in accordance with law, if they so desired. (Copy of the Judgment and Order dated ~~23-10~~ 23-10-2008 is attached as Annexure 'A').
3. That after the Judgment dated ~~23-10~~ 23-10-2008 of Service Tribunal the appellant approached the respondents for the implementation of Judgment Honorable Service Tribunal, however, the Department remained reluctant to implement the judgment of the Tribunal, at last instead of reinstating the appellant in to service served him with a Charge Sheet and Statement of allegation dated 16-01-2009, the appellant submitted application dated 23.2.2009 and requested to first reinstate him, and than if so advised proceed against him. The appellant was thereafter reinstated in service. And issued him fresh charge sheet. (Copies of the application dated 15-1-2009, Charge Sheet and Statement of-allegations, application dated 23.2.2009 and fresh charge sheet are attached in Annexure 'B', 'C', D, & E).
4. That the inquiry committee without properly associating the appellant with the inquiry proceedings, the respondents conducted a partial inquiry and recommended the appellant for the penalty of "**forfeiture of three years service**". He was however neither served with a show cause notice nor provided with any enquiry report or giving any opportunity of personal hearing to the appellant, quite illegally awarded him the penalty of "**forfeiture of two years qualifying service**" on 03-10-2009 and recorded the order on the foot note of the enquiry report. (Copy of the Inquiry Report is attached as Annexure 'F').
5. That when the appellant came to know about the penalty he filed Departmental Appeal dated 24-11-2009 however, it was not respondent till date. (Copy of the Departmental Appeal is attached as Annexure 'G').
6. That the penalty of "**forfeiture of two years qualifying Service**" is illegal, unlawful and against the law inter alia on the following grounds:

Grounds of Appeal:

- A. That the charges leveled against the appellant were never proved in the Departmental Enquiry albeit the Enquiry Officer illegally and unlawfully proved the appellant guilty.
- B. That the enquiry proceedings were never conducted in accordance with law, the statement of witness if any were never taken in the presence of the appellant nor he was allowed to cross examine them hence the Departmental proceedings are nullity in the eyes of law.
- C. That as per the judgment dated 23-10-2008 the Department was required to proceed a fresh against the appellant **in accordance with law**, however, the Department again proceeded against the appellant without following proper procedure thus the inquiry so conducted was not only against the expressed provision of law / also against the judgment dated 23-10-2008 of this Honorable Tribunal.
- D. That the competent authority has neither issued any Show Cause Notice nor given any opportunity to the appellant before awarding him penalty. It is also pertinent to mention that even the order of the penalty was not communicated to the appellant.
- E. That the Charge Sheet & statement of allegations were served upon the appellant without issuing him reinstatement order thus awarding penalty on the basis of the defective departmental proceedings is not tenable.
- F. That the penalty of forfeiture of service is not written / mentioned in the Removal from Service (Special Powers) Ordinance-2000 thus not tenable. Further the penalty order is not in proper form. Therefore, is liable to be set at naught on this score alone.
- G. That the appellant did not absented himself from duties willfully but it was due to his ailing health which was beyond his control, and quite rightly the Medical Officer, DHQ Hospital Mardan advised him complete bed rest, those certificates were communicated to the respondents in time however it was rejected illegally and unlawfully.

- H. That the appellant is having 32 years spotless service at his credit, the penalty of **"forfeiture of service"** is harsh and liable to be set aside.
- I. That the appellant remained jobless during the intervening period however he was not allowed the arrears of pay illegally and unlawfully.
- J. That the appellant seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this appeal.

It is therefore prayed that on acceptance of this appeal the Impugned order dated 03-10-2009 may please be set-aside with consequential benefits.


Appellant

Through



IJAZ ANWAR KHAN
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. ____/2012

Yousaf Khan SI, Police Station Kanju District Swat.

(Appellant)

VERSUS

Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

Application for condonation of delay if any
in filing the above noted appeal

Respectfully Submitted:

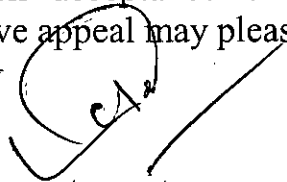
1. That the appellant has filed the accompanied service appeal in which no date has been fixed so far.
2. That the Petitioner prays for the condonation of delay in filling the above noted petition inter alia on the following grounds: -

Grounds of Application:

- A. That the appellant throughout agitated the matter with the department and waiting for the decision of his departmental appeal, however when failed to get any response is filling this appeal.
- B. That the proceedings conducted against the appellant are illegal, void and nullity in the eyes of law, no proper order of penalty was issued, similarly no show cause notice is served upon the appellant before the imposition of the penalty thus the order impugned is nullity and no period of limitation run against such order.
- C. That the appellant never remained negligent while pursuing his remedy thus the delay if any is condonable.
- D. That valuable rights of the petitioner are involved in the case hence this Grievance petition deserves to decide on merit.
- E. That the delay if any was not willful or contumacious hence deserve leniency.

F. That it has been the consistent view of the superior courts that causes should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 & 2003 PLC (CS) 769.

It is therefore prayed that on acceptance of this application the delay in filing the above appeal may please be condoned.



Applicant

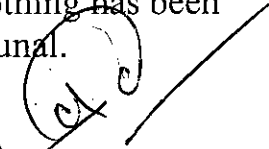
Through



Ijaz Anwar
Advocate Peshawar

Affidavit

I do hereby solemnly affirm and declare that the contents of the above appeal as well as the application are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent

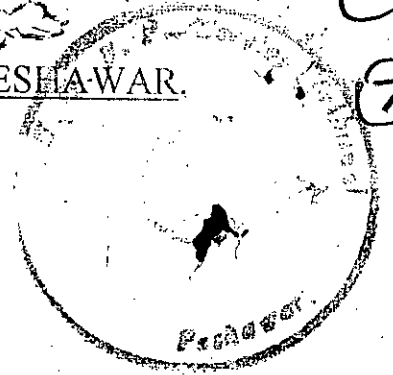
ATTESTED
HALID MAHMOOD ADVOCATE
OATH COMMISSIONER
PESHAWAR HIGH COURT

Handwritten signature and date
12-1-11

244-7645011

ANNEX (A)

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.



Appeal No 602/2008

Date of institution - 09.04.2008

Date of decision - 23.10.2008

Yousaf Khan Ex-ASI, C.P Ayub Bridge District Swat, R/O Sakhakot
Malakand Agency.....(Appellant)

VERSUS

1. Provincial Police Officer, NWFP Peshawar.
2. Deputy Inspector general of Police, Malakand Region, Saidu Sharif Swat.
3. District Police Officer Swat.....(Respondents)

Appeal under Section 4 of the NWFP Service Tribunal Act 1974, read with Section 10 of the NWFP Removal From Service (Special Power) Ordinance, 2000 against the order dated 17.12.2007, whereby the appellant was awarded the major penalty of dismissal from service with effect from 16.10.2007, against which the departmental appeal dated 7.1.2008 was rejected vide office order No 933 E dated 10.3.2008 communicated to the appellant on 14.3.2008.

Mr. Ijaz Anwar Advocate, For Appellant.
Mr. Ghulam Mustafa, A.P.G.....For Respondents.

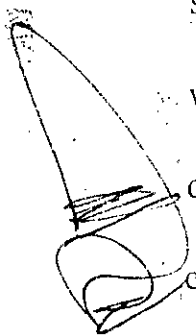
MR. NOOR-UL-HAQ MEMBER.
SYED MANZOOR ALI SHAH..... MEMBER.

JUDGMENT.

NOOR-UL-HAQ, MEMBER : - This appeal has been filed by the appellant against the order dated 17.12.2007 whereby he was awarded the major penalty of dismissal from service with effect from 16.10.2007,

against which the departmental appeal dated 7.1.2008 was rejected vide order dated 10.3.2008 communicated to the appellant on 14.3.2008. He prayed that both the impugned orders may be set aside and the appellant be reinstated in service with full back wages and benefits of service.

2. Brief facts of the case are that the appellant was appointed as Foot Constable in the Police Department on 9.1.1978. He successfully completed the police training course and during the course of his service he was promoted as ASI. While serving in the said capacity, he was posted at Police Lines Swat. The appellant fell ill and was taken to his home. He was medically examined thus the Medical Officer on duty advised him complete bed rest due to the nature of the disease. The appellant accordingly referred the medical slips to his immediate officer. In the meantime, the respondent department initiated departmental proceeding, however, the appellant was not served with any charge sheet and an ex-parte inquiry was conducted, and the Inquiry Officer without associating the appellant, submitted his findings. Thereafter, the respondents issued a show cause notice, proposed to make reply, however, Respondent No. 3 without waiting for the reply of the appellant awarded the major penalty of dismissal from service to the appellant vide order dated 17.12.2007 with effect from 16.10.2007. The appellant preferred a departmental appeal dated 7.1.2008, however, it has been rejected vide order dated 10.3.2008 communicated to the appellant on 14.3.2008. Hence, this appeal.



[Handwritten signature]

[Handwritten signature]

3. The respondents were summoned. They appeared through their representative, submitted written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the charges leveled against the appellant were never proved in the departmental inquiry albeit the Inquiry Officer illegally and unlawfully proved the appellant guilty. The inquiry proceedings were never conducted in accordance with law, the statement of witness, if any, were never taken in the presence of the appellant nor he was allowed to cross examine them hence, the departmental proceedings are nullity in the eyes of law. No endeavor was made to associate the appellant with the inquiry proceedings, thus the inquiry conducted at the back of the appellant is legally not tenable. The Inquiry officer as required did not serve the charge sheet under the law, instead Respondent No. 3 issued the charge sheet thus the whole proceedings conducting on the basis of the defective charge sheet is not tenable. Past lapses, if any, cannot be made the basis for the dismissal from service, because these were dealt with/finalized at the relevant time, therefore the proceedings initiated on the past allegations are illegal and untenable. The appellant had not absented himself from duties wilfully but it was due to his ailing health which was beyond his control, and quite rightly the Medical Officer, DHQ Hospital Mardan advised him complete bed rest. The medical certificates were communicated to the respondents in time, however, it was rejected illegally and unlawfully. Legally under no circumstances, the medical leave can be refused, because the appellant was

unable to join his duties, thus the refusal to grant such leave is illegal and unlawful. The appellant has committed no act or omission, which can be termed as misconduct, nor he showed any cowardice in his entire service will demonstrate his conduct, hence, the impugned order, is nullity in the eyes of law. The appellant is jobless since his illegal dismissed from service. He prayed that on acceptance of this appeal both the impugned orders may be set aside and the appellant be reinstated in service with full back benefits of service.

6. The learned A.G.P argued that the orders passed by the respondents are legal and according to law. The appellant deliberately absented himself from lawful duty and during inquiry he was summoned by the Inquiry Officer but he did not appear before the Inquiry Officer, hence, correctly dismissed from service. Proper departmental inquiry was conducted against the appellant and after codal formalities the appellant was dismissed from service. The appellant is habitual absentee and unwilling worker as is evident from his service record. The appellant deliberately absented himself from his lawful duty without prior permission of his superiors. He remained absent and showed cowardice by leaving the place of duty. He prayed that the appeal of the appellant may be dismissed.

7. After hearing the arguments of the parties and perusing the record it is evident that proper procedure had not been followed by the respondent department while terminating the services of the appellant. The appellant was not served with the charge sheet or notice of inquiry. The charge sheet was served by the authority himself instead of Inquiry Officer, which is in

5

11

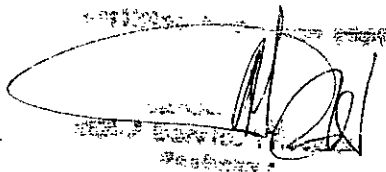
violation of Section-5 of the NWFP Civil Servants Removal from Service
 (Special Powers) Ordinance 2000. The appellant was punished for the
 allegations which were administratively dealt with at the relevant time and
 therefore, again for the same allegations he cannot be punished. The
 appellant was having more than 29 years service at his credit, but was
 awarded a very harsh punishment. Reference can be made to PLD-2007-
 SCP-397.

8. Having noted these irregularities, we set aside the impugned order of
 dismissal dated 17.12.2007 and re-instate the appellant into service and
 allow the department to proceed afresh against the appellant in accordance
 with law, if they so desire. The question of back benefits is to be decided
 by the authority on the out come of fresh inquiry if any. No order as to
 costs. File be consigned to the record.

ANNOUNCED.
 23.10.2008.


 (SYED MANZOOR ALI SHAH)
 MEMBER.


 (NOOR-UL-HAQ)
 MEMBER.



Number of pages	2000
Number of copies	12
Copy	12
Total	12
Date of receipt	19-11-08
Date of delivery	19-11-08



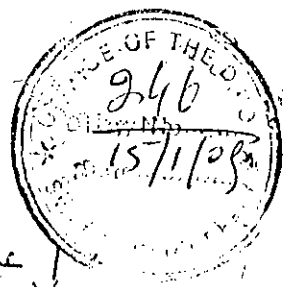
11.01.09

13

12

ANNEXURE (B)

X



DSR/DA
17/1/09

دقیقیت ہر امداد و مناسبت حکم

حوالہ منجول فوٹو کاپی حکم مناسبت عدالت
سروس ٹریبونل لہور (5) قطعاً
موجودی خدمت ہوں۔ تم فاضل عدالت نے یہ مطابق
حکم باہر ملازمت پر بحال کرنا حکم فرمایا ہے
امدادیہ رقم اندر سے تسلیم مناسبت حکم
صادر فرماویں۔ خواہش ہوگی

سال
زیستہ ناسالیم ASI صلح سوات ملازمت ڈورین

DSP/legal, Svat.

For comments

Date: 15.01.2009

Attested

[Signature]
P.A.T. / D.C./Swa

DSP/Svat.
15/01/09

Keep with the
Director's papers of ASI

In this connection fresh
enquiry initiated against the
defaulter ASI in the light of the
judgment of Honorable Services Tribunal NWFP
Peshawar dt. 23.10.08.

[Signature]
DSR/legal Svat
17/1/09

(13)

CHARGE SHEET

حجاز اعظمی

I Mr. Dilawar Khan, DPO Swat as competent authority, hereby charge you, ASI Yousaf Khan as following that you, while posted to Police Lines Swat committed the following irregularities:

You ~~Constable~~ ASI Yousaf Khan, while posted to Police Lines Swat absented yourself from duty with effect from DD report No.37 dated 16/10/2007 and showed cowardice and deliberately leaving your place of duty making your self as deserter with out any sanctioned leave or permission from your immediate officers.

All these based on your malafied intention, negligence, omission and disinterest in duty which is gross misconduct on your part.

2. By reasons of the above, you appear to be guilty of misconduct under Section-3 of the NWFP (Removal from Service) Special powers ordinance 2000, and have rendered yourself liable to all or any of penalties specified in section-3 of the ordinance.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry officer / Committee, as the case may be.

4. Your written defense, if any, should reach the Enquiry Officer/ Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall follow against you.

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

6. A statement of allegations is enclosed.

District Police Officer, Swat

15/01/08

No. 60 /EB

Dated 16/1 /2008

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DISCIPLINARY ACTION

I Mr. Dilawar Khan, DPO, Swat District Police Officer, Swat as competent authority, am of the opinion that ASI Yousaf Khan has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of section 3 of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

That he while posted to Police Lines Swat absented himself from duty with effect from DD report No.37 dated 16/10/2007 and showed cowardice and deliberately leaving your place of duty making your self as deserter with out any sanctioned leave or permission from your immediate officers.

نبردلی

مانتھام اور اجازت کے بغیر جھوٹا

صحت - دیوڑھی
جی

All these based on his malafied intention, negligence, omission and disinterest in duty which is gross misconduct on your part.

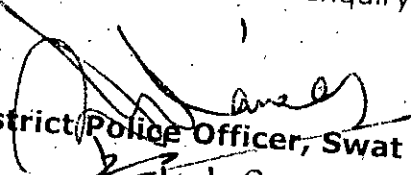
انتظام کرنا / منہ میں کھانا پھینکنا

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry committee consisting of the following is constituted under section 3 of the Ordinance.

1. Mr. Mohammad Ayaz Khan, DSP Legal
2. _____

3. The enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within, 25 Days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place given by the enquiry Committee.


District Police Officer, Swat
15/11/08

No. 60 /E, Dated Gulkada the, 16/11 2008.

Copy of above is forwarded to the:-

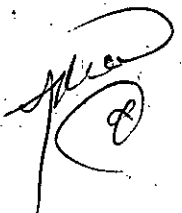
1. Mr. Mohammad Ayaz Khan, DSP Legal
2. _____

} for initiating proceeding

against the Officer/Official under the provisions of the NWFP/Removal from Service (Special Powers) Ordinance 2000.

ASI Yousaf Khan Police Lines Swat

With the direction to appear before the enquiry Committee on the date and place fixed by the Committee for the purpose of he proceeding



23

درخواست برآمدگی سروس

صاحب عالی
 جوالم مشمول آرڈر جاریہ سروس ٹریبونل کی دستاویز
 نمبرہ - 2000. 10. 23 کی پانچ (5) قطعاً
 معروفی خدمت ہوں۔ ہم عدالت سروس ٹریبونل
 دستاویز نے من سائل کو ملازمت پر بحال دیکھا حکم
 ما در فرمایا ہے۔ انڈین سلیم میں آڑی تقریر
 درخواست پیش کر چکا ہوں۔

12.11
 25/10/09

No-127P
 26/2/09

درخواست پر ضابطہ POSP ملنے میں سائل
 کے خلاف جاریہ ٹریبونل CHARGE SHEET
 جاری کرنے کی تقریر فرمایا ہے۔ قوتہ قانونی
 لحاظ سے من سائل DISMISSE کر دیں۔

قانونی کی ذمہ داری کو دوبارہ ملازمت پر (RE-INSTATE)
 کیا جائے۔ حافی کے بعد قانونی کا لے CHARGE SHEET
 دینا چاہیے

استدعا ہے کہ یہ قلمی سروس ٹریبونل حکم میں سائل کو
 ملازمت پر بحال دیکھا حکم ما در فرمادیں۔

نمبرہ 2000. 02. 23

سائل دہریہ مآبہ لوسو خان لاسی ASI قلمی سائل

دوسو خان لاسی
 23. 2. 2009

DSP/legal.
 for report.

ASi
 24/02/09

ASi

Attested.
 P.A. TO D.P.C. Swat.

CHARGE SHEET

I, Mr. Danishwar Khan DPO, Swat as competent authority, hereby charge you, ASI Yousaf Khan as following that you, while posted in Police Lines committed the following irregularities:

You ASI Yousaf Khan, while posted at Police Lines absented yourself from duty vide D.D No.37, dated 16/10/2007, showed cowardice and deliberately leaving your Place of duty also making yourself as deserter with out any leave or permission from your high ups.

All these based on your malafied intention, negligence, omission and disinterest in duty which is gross misconduct on your part.

2. By reasons of the above, you appear to be guilty of misconduct under Section-3 of the NWFP (Removal from Service) Special powers ordinance 2000, and have rendered yourself liable to all or any of penalties specified in section-3 of the ordinance.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry officer / Committee, as the case may be.

4. Your written defense, if any, should reach the Enquiry Officer/ Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall follow against you.

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

6. A statement of allegations is enclosed.

No. 580 /EB

Dated 17/4 / 2009

District Police Officer, Swat

J.M.K

[Handwritten signature]

16

17

DISCIPLINARY ACTION

I Mr. Danishwar Khan District Police Officer, Swat as competent authority, am of the opinion that ASI Yousaf Khan, has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of section 3 of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

That he while posted at Police Lines absented himself from duty vide D.D No.37, dated 16/10/2007, showed cowardice and deliberately leaving your Place of duty also making himself as deserter with out any leave or permission from your high ups.

All these based on your malafied intention, negligence, omission and disinterest in duty which is gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry committee consisting of the following is constituted under section 3 of the Ordinance.

1. Mr. Qazi Ghulam Farooq Addl: SP Swat
2. Mr. Muhammad Ayaz Khan DSP/Legal, Swat

3. The enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within, 25 Days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place given by the enquiry Committee.

[Signature]
District Police Officer, Swat

No. 580 /E, Dated Gulkada the, 17/4 2009

Copy of above is forwarded to the:-

1. Mr. Mr. Qazi Ghulam Farooq Addl: SP Swat
 2. Mr. Muhammad Ayaz Khan DSP/Legal, Swat
- } for initiating proceeding against the Officer/Official under the provisions of the NWFP/Removal from Service (Special Powers) Ordinance 2000.

[Signature] ASI Yousaf Khan *through police lines*

With the direction to appear before the enquiry Committee on the date, time and place fixed by the Committee for the purpose of he proceeding

[Signature]

اہیل نام
جناب ڈی۔ ڈی۔ آئی۔ جی صاحب ملاکنڈ رینج لاہور مقام سیدو شریف سوات

بہ وجوہات ذیل

جناب سائی

- ① یہ سائی فکد پولیس میں بورڈ 1978-01-09ء و عبثیت میں بھرتی ہوا
- ② یہ مڈ فائل اوقات پر سائی نے فکد پولیس کے کورسز۔ امتحانات پاس کر کے
بہ عمدہ ASI تقریباً ہوا ہے
- ③ یہ سائی نے فکد پولیس میں تقریباً (32) سال سروس کی ہے اور
حاضر سروس ہے
- ④ یہ سائی کو سابق DP صاحب واقفانے بورڈ 07-12-17 کو پاس کیا تھا
- ⑤ یہ سائی نے عدالت سروس ٹریننگ پشاور میں اہیل دائر کی
- ⑥ یہ سائی نے عدالت ڈسپلین اور ڈرگ کو SET ASIDE کیا اور بجائی کا حکم فرمایا
مذکورہ حکم فرمایا کہ اگر فکد چاہے تو حکیمانہ فرسٹی انٹرویو مانوں کے مطابق کر سکتے ہیں
- ⑦ یہ سائی نے حکم عدالت بورڈ 05-01-2009ء کو دفتر صاحب سڈ ملنگ صاحب پولیس دفتر
سوات فیکس کے ذریعے بھیج دیا
- ⑧ یہ سائی نے حکم عدالت کے ساتھ فزری درخواست بڑا بجائی ملازمت بورڈ
15-01-2009ء - بورڈ 23-2-2009ء کو دفتر سڈ ملنگ میں پیش کی
- ⑨ یہ سائی کو ملازمت پر بجائی کے بجائے چارج شیٹ بڑا 06 بورڈ 16-11-09
جاری ہوا جو غیر قانونی ہے
- ⑩ یہ سائی کو چارج شیٹ بڑا 06 بورڈ 16-11-09ء پر واپس بورڈ 03-03-09
کو موہول ہوا
- ⑪ یہ سائی نے فزری درخواست دوبارہ بجائی ملازمت جناب ڈی۔ ڈی۔ آئی۔ جی صاحب
ملاکنڈ رینج لاہور میں کی۔ موصوف نے سائی کو جوالم آرڈر ٹیک بڑا 56
بورڈ 10-4-09ء کو بجائی کا حکم فرمایا
- ⑫ یہ سائی نے جوالم ٹیک بڑا 39 بورڈ 15-4-09ء کو طفری کی ہے نعتیہ طور پر ہے
- ⑬ یہ سائی نے بعد چارج شیٹ بڑا 586 بورڈ 17-4-09ء جاری ہوا
- ⑭ یہ سائی نے صلح مذاہن حالات کشیدہ ہو اور سائی نے خلد فرمایا کارروائی خانہ نوری
کی حد تک کی گئی اور پروانہ جات تیار جاری کیے گئے۔
- ⑮ یہ سائی نے وقتاً فوقتاً میڈیکل لیو مانڈات پیش کیے ہیں جو Ms دوران

مس

(21)

(2)

16) یہ سائل کو خبر سے کاموں میں دیا گیا۔ اور سننے کا بھی موقع نہیں دیا گیا۔

17) انکو ڈری آؤٹ سے فائنڈمنٹ رپورٹ فورہ 28-9-09 میں میڈیکل ریسورٹس کے ساتھ اتفاق میں کیا۔ جو کہ ڈسٹرکٹ اسپتال قردان کے میڈیکل سپرنٹنڈنٹ کا دستخط شدہ ہے۔ اور عمر میں 3 سال ملازمت کی سفارش کی ہے۔

18) تم صاب 800 ماہانہ دو سال ملازمت کی شرطی کا حکم فرمایا ہے۔

19) یہ سائل نے (32) سال طویل عمر ملازمت کی ہے۔ اور اسی طویل عمر ملازمت میں کافی (انٹیک لیو جوع ہو چکی ہے۔

20) یہ حکم صادر شدہ سے سائل کو بے خبر رکھا گیا ہے۔ جو یو۔ 03-10-2009 سے آیا گیا ہے۔

صاحب عالی

یہ بارہ وجوہات سے بنا دیر سائل حالت پر رحم فرمائے مدد عمل سے منظور کرنے اور ضابطہ شدہ دو سالہ عمر ملازمت بحال کرنے کا حکم فرمادیں۔ پھر بعد معائنہ ہو لیتا۔

ایل کتند

ایک نامور ریٹائرڈ ایس ایس ٹی کے لیے ایس ایس ٹی کے مقام کا حق
24.11.2009

24.11.2009
PS
24.11.2009

Handwritten signature

POWER OF ATTORNEY

In the Court of Magbox Peshawar Khana Service Tribunal Pesh
YOUSAF KHAN

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Provincial Revenue Officer
and others

} Defendant
} Respondent
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, HIGH COURT, PESHAWAR

and Sajid Anwar Advocate my true and lawful attorney, for me in my same and on my behalf to appear at Pesh to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Companies or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Pesh
the _____ day to _____ the year _____
Executant/Executants Sajid Anwar
Accepted subject to the terms regarding fee _____

Accepted
Sajid Anwar
Advocate

Ijaz Anwar
Advocate High Courts & Supreme Court of Pakistan

22/3

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

Service Appeal No. 34/2012

Titled

Yousaf Khan SI Police Station Kanju District Police Swat.

Appellant

VERSUS

- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- 2) Deputy Inspector General of Police, Malakand Region Saidu Sharif Swat
- 3) District Police Officer, Swat.

**WRITTEN STATEMENT/REPLY TO APPEAL ON BEHALF OF
RESPONDENTS**

Respectfully Shewith,

The reply to appeal on behalf of Respondents No. 01 to 03 is submitted as below:-

1. Preliminary Objection:-

- 1) That the appellant has got no cause of action and locus standi.
- 2) That the appeal is time barred.
- 3) That the appeal is not maintainable in its present form.
- 4) That the appellant is estopped by his own conduct to file the instant appeal.
- 5) That the appeal is bad due to mis-joinder and non-joinder of the necessary parties.
- 6) That the appellant has not come to the Tribunal with clean hands.

2. Facts

- 1) Para No. 1 of appeal pertains to record.
- 2) Para No. 2 of appeal parties to judicial record.
- 3) Para No. 3 of appeal is incorrect. In compliance of Service Tribunal Judgment dated 23/10/2008 by implementing the same, afresh enquiry was initiated against the appellant, in accordance with the provision of Removal from service (Special Power) Ordinance 2000 and proper Departmental Enquiry was conducted against appellant through Enquiry Committee comprising of Additional SP and DSP legal Swat, who found appellant against of mis-conduct and recommended for punishment vide enquiry report dated 02-10-2009.
- 4) Para No.4 of appeal is incorrect. The enquiry committee conducted, fair impartial manner, and strictly in accordance with law and rules punishment order is quite legal and one sound footing.
- 5) Para No. 5 of appeal in incorrect, against the facts.

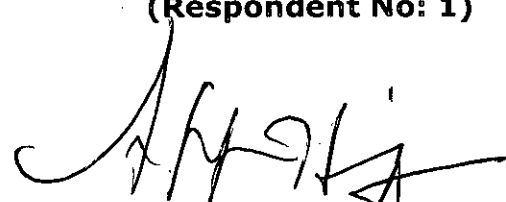
- 6) Para No. 6 of appeal is incorrect; penalty awarded to appellant is quite legal and strictly in accordance with law.

GROUND:

- A) Incorrect, the charges leveled against appellant were proved during enquiry proceedings due to which Enquiry Committee recommended him for punishment.
- B) Incorrect. The departmental enquiry was initiated strictly in accordance with law.
- C) Incorrect. The judgment of Service Tribunal dated 23-10-2008 was implemented in its letter and spirit, and was proceeded against afresh by complying with the direction of Tribunal Judgment dated 23-10-2008 referred in the last para.
- D) Incorrect, hence not admitted need no comments.
- E) Incorrect, no committed.
- F) Incorrect, against the facts.
- G) Incorrect. Appellant deliberately absented himself from lawful duties and proved himself inefficient police official having no regards to the department and leave his place of duty without obtaining proper leave from the competent authority.
- H) Incorrect. The punishment awarded to the appellant is quite legal and commensurate with the guilt.
- I) Incorrect, needs no comments.
- J) That the respondents also seeks the permission of the Hon'ble Tribunal to rely on additional grounds at the time of hearing of this appeal.

It is, therefore prayed that appeal filed by appellant may graciously be dismissed.


1) **Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No: 1)**


2) **Deputy Inspector General of Police,
Malakand Region Saidu Sharif Swat
(Respondent No: 2)**


3) **District Police Officer Swat
(Respondent No: 3)**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

SERVICE APPEAL NO. 34/2012

SI Yousaf Khan

Titled


VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others
(Respondents)

POWER OF ATTORNEY

We, the undersigned No. 1 to 3 do hereby appoint Mr. Muhammad Ayaz Khan DSP Legal Swat as special representative on our behalf in the above noted appeal. He is authorized to represent us before the tribunal on each and every date fixed and to assist Govt: Pleader attach to Tribunal in submission of record.


1) Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)


2) Deputy Inspector General of Police,
Malakand Region Saidd Sharif Swat ,
(Respondent No. 2)


3) District Police Officer, Swat ,
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

SERVICE APPEAL NO. 34/2012

SI Yousaf Khan

Titled


VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others
(Respondents)

COUNTER AFFIDAVIT

We, the undersigned No. 1 to 3 do hereby solemnly and declare on Oath that the content written statement to appeal are true and correct according to our knowledge and belief and nothing has been cancelled from the Service Tribunal, Khyber Pakhtunkhwa, Peshawar.


1) Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)


2) Deputy Inspector General of Police,
Malakand Region Saigoh Sharif Swat ,
(Respondent No. 2)


3) District Police Officer, Swat. ,
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Source: Appeal No. 34/2012

YOUSAF KHAN

VERSUS

PROVINCIAL POLICE OFFICE, KHYBER PAKHTUNKHWA, PESHAWAR AND OTHERS.

REPLICATION ON BEHALF OF THE APPELLANT

RESPECTFULLY SUBMITTED:

The appellant submits his replication as under:

Primarily Objections:

1. Contents incorrect and misleading, the appellant has been illegally awarded the penalty of forfeiture of 2 Years of qualifying service, thus has got necessary cause of action and locus standi.
2. Contents incorrect the appeal is filed well within the prescribed period of limitation.
3. Contents incorrect and misleading, the appeal being filed well in accordance within the prescribed rules and procedure, thus maintainable in its present form.
4. Contents incorrect and false no rule of estoppel is applicable in the instant case.
5. Contents incorrect and misleading, all parties necessary for the disposal of the appeal arrayed as parties.
6. Incorrect and false, the appellant has come to the court with clean hands.

FACTS:

1. Contents need no reply, however contents of Para 1 of the appeal are true and correct.
2. Contents need no reply, however contents of Para 2 of the appeal are true and correct.
3. Contents of Para 3 of the appeal are correct. The reply submitted to the Para is incorrect and false.
4. Contents of Para 4 of the appeal are correct. The reply submitted to the Para is incorrect and false.
5. Contents of Para 5 of the appeal are correct. The reply submitted to the Para is incorrect and false.
6. Contents of Para 6 of the appeal are correct. The reply submitted to the Para is incorrect and misleading.

GROUND:

Grounds (A to J) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

It is, therefore, humbly prayed that on acceptance of this replication the appeal of the appellant may please be accepted as prayed for.

Through

Appellant

IJAZ ANWAR

Advocate

AFFIDAVIT

I do hereby affirm and declare on oath that the contents of the above replication as well as appeal are true and correct and nothing has been concealed from this honorable Tribunal.

ATTESTED



DEPONENT