

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1407/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/09/2022	<p>The appeal of Mr. Eid Badshah presented today by Syed Shahid Shah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;">REGISTRAR</p>

Before the Khyber Pukhtun khawa Service Tribunal Peshawar

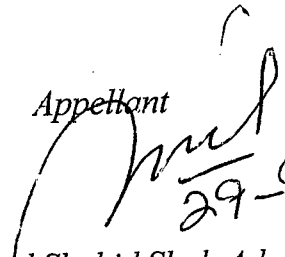
Appeal No. 1407/2022
Eid Badsha versus District Judge Orakzai.

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Through

Appellant


29-9-2022
Syed Shahid Shah Advocate

03469140337

(1)

Before the KPK Service Tribunal Peshawar

Appeal No. 1407/2022

Eid Badshah S/O Din Hasan Driver at District Judiciary District Orakzai.

(Appellant)

Versus

- 1. District and Session Judge Orakzai.*
- 2. Registrar Peshawar High Court Peshawar.*

(Respondents)

APPEAL AGAINST THE ORDER DATED 30/04/2022 ISSUED BY RESPONDENT NO,1 WHEREBY APPELLANT HAS BEEN DISMISSED FROM SERVICE WITHOUT FOLLOWING LAW AND RULES, HENCE AGAINST THE LAW, RULES SO LIABLE TO BE SET ASIDE AND APPELLANT BE REINSTATED.

Prayer:

On acceptance of this appeal impugned order dated 30/04/2022 issued by respondent No 1, please be set aside and the appellant may be reinstated with full back benefits.

Respectfully sheweth,

- 1. That appellant was inducted in service as Driver in the District Judiciary and serve the department with due care.*
- 2. That initially the appellant was posted with Senior Civil Judge Orakzai as Driver in BPS 6 and during the service with the Senior Civil Judge the appellant perform his duties with full dedication and my performance was incorporated in my ACRs.*

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3. That later on the appellant was deputed to serve with Additional District Judge Orkazia.
4. That on 08/03/2022 an explanation letter was issued to the appellant wherein appellant was asked to explain his absence. (Copy of the Explanation letter is annexed as Annexure A)
5. That appellant duly responded the above letter and submitted that appellant was not absent but was on duty. (copy of the reply is annexed as annexure B)
6. That despite the reply of the appellant final show cause notice was issued to the appellant which was also replied. (Copy of the final show cause notice is annexed as annexure C)
7. That after the reply without affording of any opportunity under the law the appellant was dismissed from service vide order dated 30/04/2022 which was received to the appellant on 01/06/2022. (Copy of the impugned order and dairy page is annexed as annexure D)
8. That appellant filed an appeal against the impugned order before the Registrar Peshawar high court Peshawar on 14/06/2022 but since the submission of appeal no order has been passed and statutory period for the decision has already been exhausted, hence the instant appeal on the following grounds:

Grounds:

- A. That impugned order has been passed without adopting legal procedure and no opportunity of hearing has been afforded to the appellant hence the order is illegal and unlawful.
- B. That no proper inquiry committee has been constituted and no regular inquiry has been conducted hence the order is passed in violation of law and rules.
- C. That at first an explanation letter was issued and then suddenly final show cause notice was issued with first show cause notice and thus transgressed the law and rules.
- D. That no inquiry committee has been constituted and no regular inquiry has been conducted hence the rules of service have been violated and order passed in haste.

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- E. That by depriving the appellant from due course of law is violation of fundamental right as guaranteed in the constitution and this without fair trial order is in violation of constitutional provisions.
- F. That absence from duty is a question of fact and it could not be determined without recording of evidence so the order is illegal only on this score.
- G. That while issuing the order policy was violated and rules were transgressed because only upon alleged absence from duty so the appellant was deprived.
- H.) That the impugned order is void ab initio and not maintainable in the eyes of law.

It is therefore humbly prayed that on acceptance of this appeal the impugned orders dated 30/04/2022 may graciously be set aside and the appellant be reinstated on the post with full back benefit.

عبد اللہ
Appellant
Through
29-9-2022
SYED SHAHID SHAH ADVOCATE

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Before the Khyber Pukhtun khawa Service Tribunal Peshawar

Eid Badshah..... (Appellant)

Versus

District Judge Orakzai and others..... (Respondents)

Affidavit

I, Eid Badsna S/O Din Hassan appellant do hereby solemnly affirm and declare on oath that the content of the accompanying appeal are true to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

عید بادشاہ

Deponent

14101-9890514-9

03335011537

Identified By

Syed Shahid Shah Advocate



29-9-2012



(5)

(A)

DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
office of the
ADDITIONAL DISTRICT AND SESSIONS JUDGE, ORAKZAI
Email: dsjorakzai@gmail.com
Phone: 0925-690320 Fax No: 0925-690320

F.(1) 251 /Gen/AD&SJ-ORK/2022

Dated Orakzai, the 08/03/2022

To,

Annexure - A

Eid Badshah, Driver (BPS-6)
Attached to the Office of Additional District & Sessions Judge,
Orakzai.

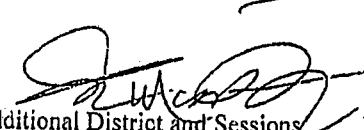
Memo:

While referring to the subject noted above, it is stated that you, Eid Badshah Driver (BPS-6), is in constant habit of absenting yourself without any permission, application and intimation with intervals and excusing with baseless pretexts when appears after such absence. You while driving are using abusive language and gestures to the road users without considering other passengers including the undersigned and family seated in vehicle. You have time and again been directed to reform your attitude and style of driving but you failed to comply with. Your attitude is non-submissive and you also instigate other officials for insubordination. Your behavior is aggressive and you don't care the words you use in communication. You put your appearance for the last time on 25th of February, 2022 and since then you are absent without prior approval, intimation or application. This explanation has been directed to be served through Superintendent District Judiciary, Orakzai as the official concerned is still absent till this day of 8th March, 2022. It is further directed that your explanation to the undersigned shall reach within three days of service of this letter.

Additional District and Sessions
Judge Orakzai.

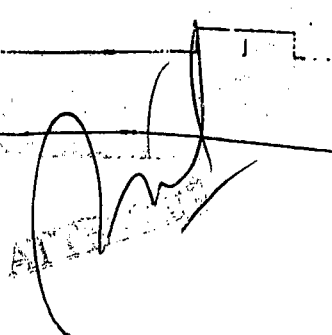
Copy for information to:

1. Hon'ble the District & Sessions Judge, Orakzai.
2. Senior Civil Judge, Orakzai.
3. The Superintendent with direction to serve the official concerned in person or to deliver or dispatch on his last permanent address with intimation to the undersigned.


Additional District and Sessions
Judge Orakzai

RECEIVED
2/6/2022

DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
ORAKZAI



(6)

Annexure - B (6)

بعدالت جناب ایڈیشنل ڈسٹرکٹ اینڈ سیشن جج صاحب اور کزٹی

جواب ملی

جناب عالی

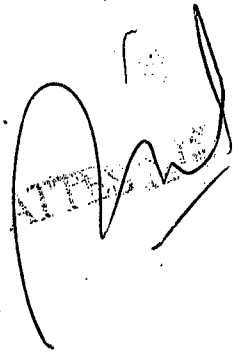
مودبانہ گزارش ہے کہ میں نے 25-02-2022 تک اپنی ڈیوٹی سرانجام دی جبکہ 25-02-2022 سے لیکر 8-3-2022 تک ڈرائیور جیب کی ڈیوٹی تھی۔

یہ کہ آپ اور آپ کے فیملی کے ساتھ ڈرائیونگ کے دوران میں نے کبھی دوسرے لوگوں کے ساتھ غلط زبان کا استعمال محسوس نہ کی ہے اگر پھر بھی غلطی سے آپ کو میری کوئی بات محسوس ہوئی ہے تو معذرت خواہ ہوں آہندہ کیلئے محتاط رہوں گا۔

لہذا آپ صاحبان سے عاجزانہ التماس کی جاتی ہے کہ اس دفعہ سائل کو معاف کر کے آئندہ کے لیے محتاط رہے گا جواب طلبی پیش بخشور ہے۔

الحاضریہ
کسیر بادشاہ

ڈرائیور عید بادشاہ



Annexure - C (6) (7)

FINAL SHOW CAUSE NOTICE

I, Shaukat Ahmad Khan, District & Sessions Judge, Orakzai, as Competent Authority, under Section 7 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve you, Mr. Eid Badshah Son of Din Hassan, Driver (BFS-06) attached to the establishment of undersigned as follows;

2. Whereas as per report of learned Additional District & Sessions Judge, Orakzai, you have absented yourself from duty without application, intimation and permission.
3. whereas you are also reportedly noticed using abusive language/uncivilized gestures while driving official vehicle of the learned Presiding Office.
4. Whereas, sufficient material is available on record to proceed against your unbecoming attitude as you have already admitted that in your written reply.
5. whereas even after serving you with the notice of explanation your indifferent behavior towards the duty has not been changed despite the fact that a minor penalty has also been imposed upon you in recent past.
6. Your acts enumerated herein above make it evident that you are guilty of misconduct which is a valid ground for disciplinary action as prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011. As a result, thereof, I, as Competent Authority, have tentatively decided to impose upon you one or more penalties as provided under Rule 4 of the said Rules.
7. You are, therefore, required to show cause, as to why the aforesaid penalties should not be imposed upon you, and also intimate whether you desire to be heard in person.
8. If no reply to this notice is received within ten days of its delivery, it shall be presumed that, you have no defense to put in, and in that case, an ex-parte action shall be taken against you.

Date of issue: 26.03.2022

Competent Authority

SHAUKAT AHMAD KHAN
District & Sessions Judge
Orakzai at Baber Mela

2/6/22

Handwritten signature

Annexure E



DISTRICT JUDICIARY KHYBER PAKHTUNKHWA

Office of the

DISTRICT AND SESSIONS JUDGE, ORAKZAI

Email: dsiorakzai@gmail.com

Phone: 0925-690320 Fax No: 0925-690320

(8)

OFFICE ORDER


30/04/2022

Whereas, in furtherance of the written report dated 08/03/2022 of the Office of Additional District & Sessions Judge, Orakzai; whereby, it was reported that the accused official has remained absent from his official duty with effect from 25th of February of 2022 till 8th of March, 2022 and thus, act of willful absence was committed by accused official namely Eid Badshah (Driver, BPS-06), disciplinary proceedings were initiated. An inefficiency and misconduct on part of accused official have also been reported therein.

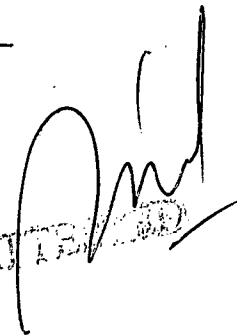
Whereas, the conduct of inquiry was dispensed with for being mandated by Rule No. 05, of KP Government Servants (Efficiency and Discipline) Rules, 2011 and a final Show Cause Notice dated 26.03.2022 was served on accused official. Reply of final Show Cause Notice consisting upon about three thousand (3000) words have been presented opting therein the opportunity of personal hearing as well.

Whereas, from the perusal of material available on file; previous official record of accused official; his frequent transfer postings on administrative grounds; constant bad behavior; admission of willful absence in reply to explanation and final show cause notice; his stubborn behavior and language used in personal hearing and his flat refusal to perform his duty, it is evident that willful absence from duty without permission and intimation has been committed with having sufficient material of inefficiency and misconduct on the credit of accused official.

Consequently, major penalty of "Dismissal from Service" as envisaged in Rule - 4 (b) (iv) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, is imposed upon the accused official namely Eid Badshah (Driver BPS-06). In addition to that, the salary, if drawn, in period of absence shall be recovered in accordance with law.



SHAIKAT AHMAD KHAN
District and Sessions Judge,
Orakzai

Office Order Dated 30/04/2022


ATTACHED

Copy forwarded for information to:

1. Worthy, the Registrar, Peshawar High Court, Peshawar.
2. The Additional District & Sessions Judge, Orakzai.
3. The Senior Civil Judge, Orakzai.
4. The District Account Officer, Account Office, Orakzai.
5. The Superintendent, District Judiciary, Orakzai.
6. The Clerk of Court, Orakzai.
7. The Budget & Account Assistant, Orakzai.
8. Official concerned by name.
9. Office Copy.


District and Sessions Judge,
Orakzai

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Office Order Dated 30/04/2022

1. worthy Registrar, Pner By Post ✓
2. ADJ-II, OR
BVI
3. SGT, OR
~~April 01-6-22~~
4. District Account Officer, OR
Skt 2, OR
12-12-22
5. Superintendent, District Juddery, OR
Pntf
6. Clerk of Court, OR
~~01-06-22~~
7. B & A Assistant, OR
~~16/22~~
8. EID. Badshah, Dnwa
~~01-06-2022~~

To

The Worthy Registrar,
Peshawar High Court, Peshawar.

Through Proper Channel

DEPARTMENTAL APPEAL AGAINST THE ORDER
PASSED BY MR. SHOUKAT AHMAD KHAN DISTRICT
& SESSIONS JUDGE, ORAKZAI DATED
30.04.2022, WHEREBY MAJOR PENALTY OF
DISMISSAL FROM SERVICE WITH ADDITION TO
DRAW THE SALARY IF DRAWN IN PERIOD OF
ABSENCE SHALL BE RECOVERED WAS IMPOSED
UPON THE APPELLANT, AGGRIEVED FROM THE SAID
ORDER, HENCE THIS DEPARTMENTAL APPEAL.

Respected Sir,

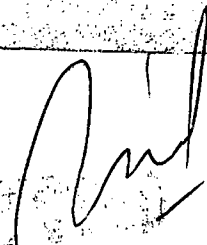
It is submitted that I was driver (BPS-06) in the District Judiciary Orakzai and was appointed on merit after the merger of FATA by the District & Sessions Judge Orakzai.

1. That I performed my duty with dedication and to best of my ability with all the judicial officers with whom I was posted in my service.
2. That after my appointment, I was posted with the first Senior Civil Judge Orakzai, with whom I remained throughout his posting as a driver. During my posting with the said Senior Civil Judge, I remained punctual, dedicated and regular and therefore I was given excellent ACR by him, which speaks volume of my performance, punctuality and commitment towards my job.



(12)

3. That after the transfer of first Senior Civil Judge, I was posted with the second Senior Civil Judge, who also gave me good ACR, which further verify my performance and dedication towards my job.
4. That finally, I was posted with Syed Fazle Wadood, ADJ Orakzai and I used to perform my duty at Kohat, which is outstation but even then I tried my best to serve the said judicial officer with best of my ability.
5. That during duty with the ADJ Orakzai at Kohat, I came across certain problems, which I brought into the kind notice of District & Sessions Judge Orakzai. The problem which I faced with is that the said judicial officer's wife Miss Shah Sultan, ADJ Hangu is also a judicial officer. Both the husband and wife used to quarrel on petty nature of matters, which created problem for me. During my duty with them, sometimes, Mr. Wadood Jan, ADJ Orakzai used to direct me to go to a place but at the same time Miss Shah Sultan, ADJ Hangu used to tell me not to go to that place. Consequently, I became confused at different times. Even then, I tried my best to perform the duty to the best of my ability.
6. That during my duty with the said judicial officer I received an explanation dated 08.03.2022 for absence from the duty (annexure-A). Resultantly, I submitted



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written reply and denied my willful absence as I was on duty (annexure-B).

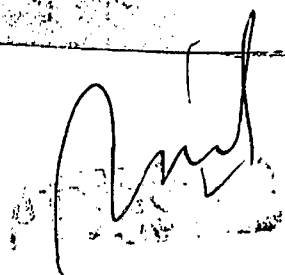
7. That during my duty, I received a final Show Cause Notice dated 28.03.2022 (annexure-C), wherein the inquiry under the E&D Rules 2011 was dispensed with and final Show Cause Notice was given. I submitted written reply to the said notice (annexure-D) and denied all the allegations contained in the said notice.

8. That during my duty, I was served with a letter dated 30.04.2022 (Annexure-E) of the District & Sessions Judge, Orakzai, wherein I was dismissed from the service without any legal formalities, provided in the law. The said order was received by me on 01.06.2022, which is evident from the record of Superintendent, District Judiciary Orakzai.

9. That through instant representation, I want to challenge the order dated 30.04.2022, regarding my dismissal, on the following grounds:

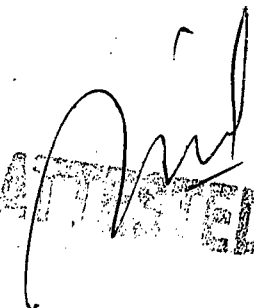
Grounds:

- a) That no legal procedure, provided in the Efficiency and Discipline Rules, 2011, was followed in the said order/inquiry.
- b) That during the inquiry, I was not given any opportunity to explain myself and to produce evidence in support of my claim.



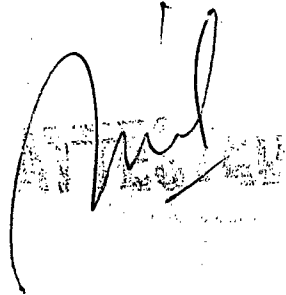
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- c) That initially I was given explanation (annexure-A), however, there was no reference of inquiry under E&D Rules, 2011, thereof, which is mandatory under the ibid Rules.
- d) That I never remained absent from the duty rather I was present on the duty throughout my service.
- e) That the fair opportunity of defense was not afforded to me which is the violation of fair trial, guaranteed under Article 10-A of the Constitution of Pakistan.
- f) That during the entire alleged inquiry, there was no specification of the fact that the inquiry was dispensed with by the Competent Authority. The order sheets of the District & Session Judge, Orakzai is evident (annexure-F), which is the violation of settled principles of law.
- g) That no grounds, whatsoever, had been given by the Competent Authority that on the basis of which the inquiry was dispensed with, which is again the violation of settled principles of law.
- h) That the other driver (Zille Habib) attached with Mr. Fazal Wadood, ADJ was not examined, who was the star witness of the whole episode. The said driver is the witness of my innocence. This is again the violation of settled principles of law that I was not


ATTACHED

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- given opportunity to examine the said driver regarding my innocence.
- i) That the whole proceedings against me was conducted in haste and hurry manner with the malafide of the Competent Authority, which is the violation of settled principles of law.
 - j) That the absence from service is a factual matter, which cannot be decided without recording of evidence.
 - k) That the wife of the said Judicial Officer is a chronic lady, who always tried to mis-used her authority on the subordinate. This factum can be verified from all those drivers, who served with her.
 - l) That the wife of the Judicial Officer used to abuse and beat me in front of all the persons working with her inside the house.
 - m) That the wife of the said Judicial Officer used to compel me to wash clothes and do other things, which is not mentioned in the job description of the drivers.
 - n) That I also submitted an application (Annexure-G) to the Hon'ble District & Session Judge, Orakzai for change of duty from the said ASJ, Orakzai due to the above said behavior and threat given to me but no such action has been taken and instead of transfer the Competent Authority dismissed me from the service which shows the malafide of the Competent Authority.



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o) That I brought all such things in the notice of District & Session Judge, Orakzai but he instead of doing the justice, he dismissed me from the service which is against the justice and the law of the land.


In light of the above, it is, therefore, respectfully prayed that the impugned order dated 30.04.2022 passed by the learned Hon'ble District & Session Judge, Orakzai may kindly be declared vide ab-initio, illegal, arbitrary and without lawful authority, hence, the same may be set aside and the appellant may kindly be re-instated and allow to serve the esteem District Judiciary Orakzai till the expiration of the service period.

Dated: 14.06.2022.

Appellant

عید بادشاہ

Eid Badshah, Driver (BPS-6)
District Judiciary Orakzai.


ATTESTED