

24th June, 2022

1. Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Fazal Qadir, Superintendent for respondents present.

2. Representative of the respondents submitted copy of order order No. 75-E/597/CEC/C&WD dated 24.06.2022 whereby in compliance of the judgment of the Tribunal, the petitioner has been reinstated into service w.e.f 14.05.2019 with all service back benefits subject to the outcome of the CPLA. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 24th day of June, 2022.*



(Kalim Arshad Khan)
Chairman

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

No. 75-E / 597 / CEC / C&WD

Dated Peshawar the 24/06/2022

OFFICE ORDER

In compliance with the Judgment of Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12.10.2021 in the Service Appeal No.1153/2019, Mr. Aurangzeb Kashmiri, Junior Clerk is hereby reinstated into service w.e.f 14.05.2019 with all service back benefits, subject to the outcome of CPLA No.677-P/2021 filed by the Department in the august Supreme Court of Pakistan.

CHIEF ENGINEER (CENTRE)

Copy to the: -

- 1) Chief Engineer (North) C&W Department Swat at Saidu Sharif.
- 2) Superintending Engineers C&W Circle Mardan/ Dir Lower.
- 3) Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 4) Executive Engineer C&W Building Division Mardan.
- 5) Executive Engineer C&W Division Dir Lower.
- 6) Section Officer (Litigation) C&W Department, Peshawar w/r to his office letter No.SO(Lit)C&W/3-44/2019 dated 25-04-2022.
- 7) District Accounts Officers, District Mardan/ Dir Lower.
- 8) Mr. Aurangzeb Kashmiri Junior Clerk R/O Sheikh Maltoan Street No.15 House No.S326 Mardan.

CHIEF ENGINEER (CENTRE)

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

No. 75-E / 597 / CEC / C&WD

Dated Peshawar the 24/05/2022

OFFICE ORDER

In compliance with the Judgment of Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12.10.2021 in the Service Appeal No.1153/2019, Mr. Aurangzeb Kashmiri, Junior Clerk is hereby reinstated into service w.e.f 14.05.2019 with all service back benefits, subject to the outcome of CPLA No.677-P/2021 filed by the Department in the august Supreme Court of Pakistan.

CHIEF ENGINEER (CENTRE)

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- 3) Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 4) Executive Engineer C&W Building Division Mardan.
- 5) Executive Engineer C&W Division Dir Lower.
- 6) Section Officer (Litigation) C&W Department, Peshawar w/r to his office letter No.SO(Lit)C&W/3-44/2019 dated 25-04-2022.
- 7) District Accounts Officers, District Mardan/ Dir Lower.
- 8) Mr. Aurangzeb Kashmiri Junior Clerk R/O Sheikh Maltoon Street No.15 House No.S326 Mardan.

CHIEF ENGINEER (CENTRE)



OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

Dated Peshawar the 20 / 04/ 2022

AUTHORITY LETTER

Mr. Fazal Qadir, Superintendent (BPS-17) O/O Chief Engineer (Centre) C&W Department, Peshawar is hereby authorized to attend the Service Tribunal, Peshawar on 20-04-2022 and on each subsequent dates, on behalf of Respondent No.1 and Respondent No.2 in Execution Petition No.67/2022- titled Aurangzeb Kashmiri V/S Govt. of Khyber Pakhtunkhwa and intimate the proceedings accordingly.


CHIEF ENGINEER (CENTRE)
C&W Department, Peshawar.



16.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 20.04.2022 for the same as before.


Reader

20th April, 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Fazle Qadar, Superintendents No. 1 and 2 present.

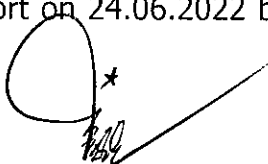
Implementation report not submitted. Learned AAG Seeks adjournment. Last opportunity is granted. Respondents No. 2 to 4 be summoned to attend the Tribunal personally alongwith implementation report on 18.05.2022 before S.B.


Chairman

18.05.2022

Petitioner in person present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Fazle Qadar, Superintendent for the respondents present.

Learned AAG requested for a short adjournment and stated at the Bar that though CPLA has been filed in the august Supreme Court of Pakistan yet there is no suspension order as yet, therefore, Service Tribunal judgement dated 12.10.2021 is under process to be implemented provisionally/conditionally. To come up for provisional/conditional implementation report on 24.06.2022 before S.B.

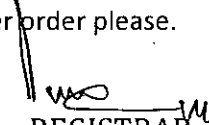



(MIAN MUHAMMAD)
MEMBER (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 67/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.01.2022	<p>The execution petition of Mr. Aurangzeb Kashmiri submitted today by Mr. Asad Mahmood Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench at Peshawar on <u>28/01/2022.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	28.01.2022	<p>Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.</p> <p>Notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 16.03.2022 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member(E)</p>

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

Execution Petition No. 67 /2022

In Service Appeal No. 1153/2022

Aurangzeb kashmiri


VS

C & W Deptt


I N D E X

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-08
3.	Vakalat Nama	-----	09

PETITIONER


Aurangzeb kashmiri

Through:


SYED NOMAN ALI BUKHARI
Advocate, High Court

Date: 24/01/2022

Cell No: 0306-5109438

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 67 /2022
In Service Appeal: 1153/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 183

Dated 24-01-2022

Mr. Aurangzeb Kashmiri Ex-Junior Clerk
O/o Executive Engineer, Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House no, S-326, Mardan.

(PETITIONER)

VERSUS

1. The Secretary to Govt of KP, C&W Deptt., civil secretariat Peshawar.
2. The Chief Engineer (center), C&W Deptt., Khyber Pakhtunkhwa Peshawar.
3. The Executive Engineer, C&W Deptt., Building Division Mardan.
4. Mr. Muhammad Israr, Inquiry Officer/The then Executive Engineer, C&W Deptt., Building Division-II, Peshawar.

(RESPONDENTS)

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 12.10.2021 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....
RESPECTFULLY SHEWETH:

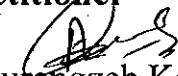
1. That the appellant filed an appeal bearing No.1153/2019 for against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 12.10.2021 and the Honorable Tribunal was kind enough to accept the appeal and the appellant is re-instated into service with all back benefits. (Copy of judgment is attached as Annexure-A).

2

3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 12.10.2021.
4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 12.10.2021 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

Petitioner


Aurangzeb Kashmiri

Through:




SYED NOMAN ALI BUKHARI
Advocate High Court.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1153/2019

Date of Institution ... 17.09.2019

Date of Decision ... 12.10.2021



Aurangzeb Kashmiri, Ex-Junior Clerk, Office of the Executive Engineer, Building Division Mardan, R/o Sheikh Maltoon, Street No. 15, House No. S-326, Mardan.
... (Appellant)

VERSUS

The Secretary Govt. of Khyber Pakhtunkhwa, Communication and Works Department, Civil Secretariat, Peshawar and three others.
... (Respondents)

MR. KHUSH DIL KHAN
Advocate

... For Appellant

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

... For respondents

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant was employee of respondents department holding the post of junior clerk. The appellant was also officer bearer of APCA, Khyber Pakhtunkhwa, holding the position of President in the Cabinet. The appellant was transferred vide order dated 15-03-2107 to Dir Lower, against which he filed departmental appeal dated 28-03-2017, but the same remained unattended. A declaratory suit was also filed by the appellant against the impugned transfer order in the court of civil judge, which was admitted and status quo was granted, but the appellant sought withdrawal of the same and filed service appeal No. 85/2019 in this Tribunal by

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

challenging his transfer order, but in the meanwhile the impugned order of imposition of major penalty of compulsory retirement from service was passed vide order dated 14-05-2019, hence his service appeal was dismissed being infructuous. The appellant filed departmental appeal dated 20-05-2019, which was not responded within the statutory period of 90 days, hence the instant service appeal with prayers that the impugned order dated 14-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the allegations leveled against the appellant are baseless, does not constitute mis-conduct entailing major penalty of compulsory retirement, hence the impugned order is not sustainable and liable to be set aside; that the appellant has never defied his transfer order intentionally or deliberately, but on the basis of status quo granted by the Court of Civil Judge, he retained the charge of his duty, which he regularly performed and was paid monthly salaries, thus the disciplinary proceedings were malafiedly initiated against the appellant for ulterior motive and he was politically victimized for his union activities being the president of APCA, therefore, the impugned order is unfair, malafidies, without lawful authority and liable to be set aside; that major penalty was imposed upon the appellant without holding a regular inquiry and the apex court in plethora of judgment have held that regular inquiry is must before imposition of major penalty; that the charges against the appellant are not so grave as to impose major penalty of compulsory retirement, which is harsh and does not commensurate with nature of the charges; that charge sheet/statement of allegation was served upon appellant on 14-11-2017, while show cause notice was served on 29-11-2018, whereas impugned order was passed and issued on 14-05-2019 with inordinate delay, without legal justification, thus the proceedings and the subsequent impugned order has no legal sanctity and has lost its venom and sting; that the appellant was condemned unheard, the impugned order was passed at back of the appellant, no proper opportunity of defense was provided to the appellant, as the allegation pertaining to factual

ATTESTED

EXAMINER
 Nhyber Pakhtunkhwa
 Service Tribunal
 Peshawar

③

controversies which could only be resolved through regular inquiry, which however was not done in case of the appellant, thus the impugned order is illegal and not sustainable in the eye of law; that respondent No 1 has not acted in accordance with law and rules and unlawfully retained the departmental appeal of appellant without any decision which is unfair and unjust.

03. Learned Deputy District Attorney for respondents has contended that being civil servant, the appellant is supposed to serve anywhere within or outside the province, as enunciated in Section-10 of Civil Servant Act, 1973; that the appellant was relieved of his duty with effect from 28-03-2017, but he did not report arrival at the place of his transfer; that due to non-compliance of transfer orders, the appellant was issued charge sheet/statement of allegations by appointing an inquiry officer vide order dated 14-11-2017; upon completion of inquiry, show cause notice was served upon the appellant, to which he responded, but his reply was not found convincing, hence taking a lenient view and keeping in view his length of service, the appellant was awarded with major punishment of compulsory retirement from service.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant obtained status quo against his transfer order dated 15-03-2017 and retained his place of posting as well as continued to receive his salaries as well. He withdrew the suit with the understanding that his transfer order will be cancelled by the respondents as per their commitments made with him, but instead, the respondents initiated disciplinary proceedings against him after withdrawal of declaratory suit. Placed on record is a fact finding inquiry, which fully supports the stance of the appellant regarding his retention on his previous post, which shows that the appellant did not disobey orders of his transfer, but stayed at his post due to orders of court. We have found that no regular inquiry was conducted against the appellant, nor he was afforded proper opportunity of defense, rather piecemeal proceedings have been conducted against

ATTESTED

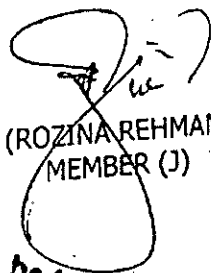
MEMBER
Service Tribunal


6

him, as charge sheet/statement of allegations has been served upon him on 14-11-2017, whereas show cause notice was served upon him on 29-11-2018 after lapse of almost one year, whereas impugned order was passed on 14-05-2019 after delay of another 6 months, which shows mala fide on part of the respondents, as the appellant was representing his co-employees through All Pakistan Clerk Association, hence respondents had developed a grudge towards the appellant for his activities for welfare of the clerk community, which ultimately resulted into award of major punishment of compulsory retirement from service, which however was not warranted. It otherwise appears a harsh penalty, even if the appellant had not complied such transfer order without aide of verdict of a court.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 14-05-2019 is set aside and the appellant stands re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
12.10.2021


(ROZINA REHMAN)
MEMBER (J)


(ATIQU UR REHMAN WAZIR)
MEMBER (E)

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 24-1-22
Number of Words 1600
Copying Fee 18/-
Urgent 51/-
Total 221/-
Name of Copyholder _____
Date of Completion of Copy 24-1-22
Date of Delivery of Copy 24-1-22

VAKALATNAMA

NO. _____ /20

IN THE COURT OF KP Service Tribunal, Peshawar

Aurangzeb Kashmiri ----- Appellant
Petitioner
Plaintiff

VERSUS

G E W DOTA ----- Respondent (s)
Defendants (s)

I/WE Aurangzeb Kashmiri -----
do hereby appoint and constitute the *SYED NOMAN ALI BUKHARI Advocate High Court* for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

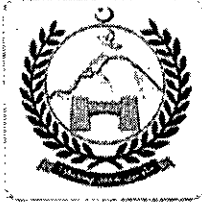
DATE _____ /20

Aurangzeb Kashmiri

(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari
ADVOCATE HIGH COURT



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 927-29/ST

Dated: 25-4-2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

1. The Chief Engineer (Center) C & W Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. Executive Engineer C&W Department Building Division,
Government of Khyber Pakhtunkhwa,
Mardan.
3. Mr. Muhammad Israr, Inquiry Officer/The then Executive
Engineer, C&W Department Building Division-II,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: ORDER IN EXECUTION PETITION NO. 67/2022 MR. AURANG ZEB KASHMIRI.

I am directed to forward herewith a certified copy of order dated 20.04.2022 passed by this Tribunal on the above subject for compliance please.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

EXECUTION PETITION NO. 67/2022

Mr. Aurangzeb Kashmiri Ex-Junior Clerk,
C&W Department Peshawar

PETITIONER

VERSUS

Secretary C&W Department & Others.

RESPONDENT

INDEX

Sl. No.	Description of documents	Annexed	Pages
1	Written Reply of Respondents	-	1
2	Affidavit	-	2
3	Section Officer Litigation C&W Department letter No. SO(Lit.) C&W/3-444/2019 dated 02.11.2021	"I"	3
4	Assistant Solicitor (Lit) Law Department letter No. SOL/DG/9-26(04)C&W/2021/905 dated 02.11.2021	"II"	4
5	CPLA No. 667-P/2021	"III"	5-12

①

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION No.67/2022

Mr. Aurangzeb Kashmiri Ex-Junior Clerk
O/O Executive Engineer, Building Division, Mardan.
R/O Sheikh Maltoon, Street No.15, House No.S-326, Mardan. Appellant.....

VERSUS

1. Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (Centre) C&W Department, Peshawar.
3. Executive Engineer Building Division, Mardan..
4. Mr. Muhammad Israr, Inquiry Officer/ the then Executive Engineer, Building Division-II, C&W Department, Peshawar.

Respondents.....

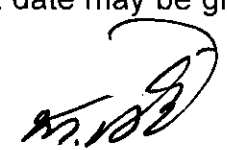
REPLY TO THE EXECUTION PETITION ON BEHALF OF RESPONDENTS

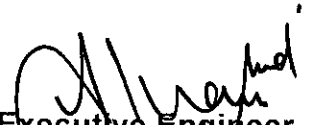
Departmental Para-wise reply is as under:-

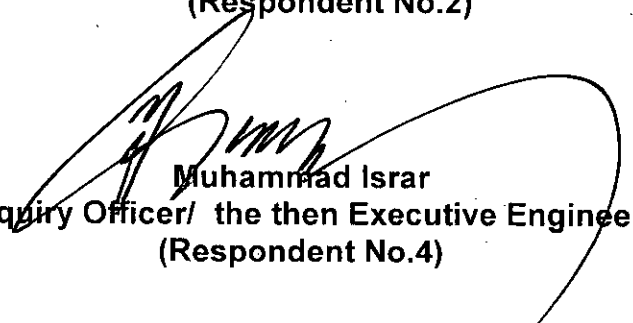
- 1- Pertains to record.
- 2- On receipt of the Judgment dated 12-10-2021 in Service Appeal No.1153 of 2019 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, the same was forwarded by C&W Department to Secretary Law Department for advice (Annex-I). The Scrutiny Committee in Law Department declared the case fit for filing of CPLA before the Supermen Court of Pakistan against the impugned judgment (Annex-II). Hence the Department filed CPLA No.677-P/2021 before the Apex Court (Annex-III).
- 3- Para-3 is Incorrect. As already stated in Para-2 of the Reply above that the Department filed CPLA in the case.
- 4- Para-4 is incorrect. The Department after getting the opinion of Law Department has filed CPLA in the Apex Supreme Court of Pakistan. No disobedience/Contempt of Court has been made.
- 5- Para-5 is incorrect. Filing of CPLA against any decision of the Court is the legal right of the Department & the Department did it. Non-compliance of the Honorable Court order (judgment) was never made.
- 6- Para-6 pertains to record.

In view of the above, it is humbly prayed that a short date may be given for implementation of the Judgment, please.


Secretary to Govt. of Khyber Pakhtunkhwa
C&W Department, Peshawar
(Respondent No.1)


Chief Engineer (Centre)
C&W Department, Peshawar
(Respondent No.2)


Executive Engineer,
Building Division, Mardan
(Respondent No.3)


Muhammad Israr
Inquiry Officer/ the then Executive Engineer
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

EXECUTION PETITION NO. 67/2022

Mr. Aurangzeb Kashmiri Ex-Junior Clerk,
C&W Department Peshawar

PETITIONER

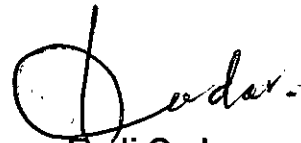
VERSUS

Secretary C&W Department & Others.

RESPONDENT

AFFIDAVIT

I, Fazli Qader, Superintendent C&W Department, do hereby solemnly affirm and declare on oath that the content of accompanying **Parawise Reply** on behalf of Respondent are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.



**Fazli Qader
Superintendent
C&W Department Peshawar**

**Most Immediate
Court Matter**

**GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT**



NO.SO (Lit.)C&W/3-444/2019
Dated Peshawar the November 2, 2021

To
The Secretary to Govt of Khyber Pakhtunkhwa
Law Department

Subject: - **SERVICE APPEAL NO. 1153/2019 TITLED AURANGZEB
KASHMIRI VS C&W**

Dear Sir,

I am directed to forward herewith a copy of Chief Engineer (Centre), C&W, Peshawar letter No. 275-E/613/CEC/C&WD dated 26.10.2021 alongwith a copy of order / judgment dated 12.10.2021 passed by the Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar which is self explanatory.

I am, therefore, further directed to request to place the case before next meeting of Scrutiny Committee for discussion as to whether the case in hand is fit for filing of Appeal / CPLA before the August Supreme Court of Pakistan against the judgment dated 12.10.2021 passed by the Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar or otherwise?

Three Sets of brief/ working paper are also attached herewith.

Encl: as above.

Yours faithfully,

(MALIK MUHAMMAD ALI)
SECTION OFFICER (LITIGATION)

SECTION OFFICER (LITIGATION)

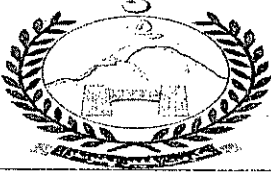
1. C&W Deptt. (Centre)
2. File No 186
3. Date 02/11/2021
4. [Signature]
5. [Signature]
6. [Signature]
7. [Signature]
8. [Signature]
9. [Signature]
10. [Signature]

Endst: of even number & date

Copy forwarded to the

1. Chief Engineer (Centre), C&W, Peshawar w/r to the above for follow up.
2. PS to Secretary C & W Department for information.

Annex 11
4



**DIRECTORATE GENERAL OF LAW & HUMAN RIGHTS
KHYBER PAKHTUNKHWA, STREET B.2 PLOT NO. 21
PHASE 5, HAYATABAD PESHAWAR**

NO.SOL/DG/19-26(04)C&W/2021/
Dated Peshawar the 02/11/2021 / 905

To

1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa,
Communication & Works Department.

Subject: Service Appeal No. 1153/2019 titled Aurangzeb Kashmiri Versus C&W.
Sir,

I am directed to refer to Government of Khyber Pakhtunkhwa Communication & Works Department letter No.SO(Lit)C&W/3-444/2019, dated: 02.11.2021 on the subject noted above and to request you to attend the meeting on **13.10.2021 at 11:00 A.M.** in the Committee Room of Law Department Khyber Pakhtunkhwa to discuss the subject case for filing of CPLA before the Supreme Court of Pakistan, or otherwise.

I am further directed to request the Administrative Department to depute the senior most officer (not below the rank of Additional Secretary / Deputy Secretary) well conversant with the facts of the case, for the schedule meeting.

Yours faithfully,


ASSISTANT SOLICITOR (Lit)

Endst: No.& Date Even.

Copy forwarded to the:

1. PS to Secretary Law Department.
2. PA to Solicitor.


ASSISTANT SOLICITOR (Lit)

Annex - III
⑤

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 677-P /2021

Secretary, Govt. of Khyber Pakhtunkhwa, Communication
and Works Department, Civil Secretariat, Peshawar & Others
-----**PETITIONERS**

VERSUS

Aurangzeb Kashmiri *& another* -----**RESPONDENT**

Appeal from : **Khyber Pakhtunkhwa Service Tribunal,**
Peshawar
Counsel for Petitioner : **Advocate General, Khyber Pakhtunkhwa,**
Peshawar
Instituted by : **Moin-ud-Din Humayun, AOR**

6

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

Secretary, Govt. of Khyber Pakhtunkhwa, Communication
and Works Department, Civil Secretariat, Peshawar & Others

-----**PETITIONERS**

VERSUS

Aurangzeb Kashmiri *vs another*

-----**RESPONDENT**

Appeal from : **Khyber Pakhtunkhwa Service Tribunal,
Peshawar**
Counsel for Petitioner : **Advocate General, Khyber Pakhtunkhwa,
Peshawar**
Instituted by : **Moin-ud-Din Humayun, AOR**

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CERTIFIED that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

**IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)**

CPLA NO. _____/2021

Secretary, Govt. of Khyber Pakhtunkhwa, Communication
and Works Department, Civil Secretariat, Peshawar & Others

PETITIONERS

VERSUS

Aurangzeb Kashmiri *by another*

RESPONDENT

CONCISE STATEMENT

1- Subject matter and the law. Service/Re-instatement in Service

Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
Hon'ble Peshawar High Court, Peshawar	a) 17/09/2019 b) 12/10/2021	Respondent filed service appeal which has been accepted
Points noted in the impugned Judgment	Treatment of points in the impugned judgment	
<p>Learned Counsel for the respondent contended that the respondent has never defied his transfer order intentionally or deliberately, but on the basis of status quo granted by the court of Civil Judge, he retained the charge of his duty, which he regularly performed and was paid monthly salaries, thus the disciplinary proceedings were malafidely initiated against the respondent for ulterior motive and he was politically victimized for his union activities being the president of APCA, therefore, the impugned order is unfair, malafides without lawful authority and liable to be set aside; that major penalty was imposed upon the respondent without holding a regular inquiry and the apex court in plethora of judgment have held that regular inquiry is must before imposition of major penalty; that the charge against the respondent are not so grave as to impose major penalty of compulsory retirement, which is harsh and does not commensurate with nature of the charges; that charges sheet/statement of allegation was served upon respondent on 14/11/2017, while show cause notice was served on 29/11/2018, whereas impugned order was passed and issued</p>	<p>Record reveals that the respondent obtained status quo against his transfer order dated 15/03/2017 and retained his place of posting as well as continued to receive his salaries as well. He withdrew the suit with the understanding that his transfer order will be cancelled by the petitioners as per their commitments made with him, but instead, the petitioners initiated disciplinary proceedings against him after withdrawal of declaratory suit. Placed on record is a fact finding inquiry, which fully supports the stance of the respondent regarding his retention on his previous post, which shows that the respondent did not disobey orders of his transfer, but stayed at his post due to orders of Court. We have found that no regular inquiry was conducted against the respondent, nor he</p>	

on 14/05/2019 with inordinate delay, without legal justification, thus the proceedings and the subsequent impugned order has no legal sanctity and has lost its venom and sting; that the respondent was condemned unheard, the impugned order was passed at back of the respondent, no opportunity of defense was provided to the respondent, as the allegation pertaining to factual controversies which could only be resolved through regular inquiry which however was not done in case of the respondent.

Learned Deputy District Attorney for petitioners has contended that respondent is supposed to serve anywhere within or outside the Province as enunciated in Section-10 of Civil Servant Act, 1973; that the respondent was relieved of his duty with effect from 28/03/2017, but he did not report arrival at the place of his transfer; that due to non-compliance of transfer orders, the respondent was issued charge sheet/ statement of allegations by appointing an inquiry officer vide order dated 14/11/2017; upon completion of inquiry, show cause notice was served upon the respondent, to which he responded, but his reply was not found convincing, hence taking a lenient view and keeping in view his length of service, the respondent was awarded with major punishment of compulsory retirement from service.

was afforded proper opportunity of defense, rather piecemeal proceedings have been conducted against him, as charge sheet/statement of allegations has been served upon him on 14/11/2017, whereas show cause notice was served upon him on 29/11/2018 after lapse of almost one year, whereas impugned order was passed on 14/05/2019 after delay of another 6 months, which shows malafide on part of the petitioners, as the respondent was representing his co-employees through All Pakistan Clerk Association, hence petitioners had developed a grudge towards the respondent for his activities for welfare of the clerk community, which ultimately resulted into award of major punishment of compulsory retirement from service which however was not warranted. It otherwise appears a harsh penalty, even if the respondent had not complied with such transfer order without aid of verdict of a Court.

The instant appeal is accepted. The impugned order dated 14/05/2019 is set aside and the respondent stands reinstated in service with all back benefits.

LAW/RULING ON THE SUBJECT

FOR

- 1- Constitution of Islamic Republic of Pakistan, 1973
- 2- KP Service Laws

CERTIFICATE:

Certified that I, myself prepared the above concise statement which is correct.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

①

②

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

1. Secretary, Govt. of Khyber Pakhtunkhwa, Communication and Works Department, Civil Secretariat, Peshawar
2. Chief Engineer (Centre) Communication and Works Department, Khyber Pakhtunkhwa, Peshawar
3. Executive Engineer, C&W Division, Mardan

PETITIONERS

VERSUS

- 1- Aurangzeb Kashmiri, Ex-Junior clerk, Office of the Executive Engineer, Building Division Mardan, R/o Sheikh Maltoon, Street No.15, House No.S-326, Mardan.
- 2- Mr. Muhammad Israr, Inquiry Officer/ The then Executive Engineer, Communication and works Department, Building Division=II, Peshawar

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER
ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973 AGAINST THE
IMPUGNED JUDGMENT/ ORDER OF THE HON'BLE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR DATED 12/10/2021 PASSED IN SERVICE
APPEAL NO.1153/2019

RESPECTFULLY SHEWETH

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually and legally incorrect and requires interference by this august Court?

- 2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?
- 3. Whether the respondent was not required to serve anywhere where he was transferred u/s 10 of the Khyber Pakhtunkhwa Civil Servant Act. 1973?
- 4. Whether the respondent has not disobeyed the order of the competent authority dated 15/3/2017?
- 5. Whether the respondent has any right under any law to be not transferred to other place?
- 6. Whether the respondent has offered any solid ground/ reason for not reporting to his place of duty where he was transferred?
- 7. Whether proper departmental inquiry was not conducted against the respondent in which respondent was found guilty of misconduct?
- 8. Whether proper charge sheet, statement of allegation and final show cause notice was not served on the respondent?
- 9. Whether the transfer order dated 15/3/2017 of respondent was not a bonafide order in public interest?
- 10. Whether the stays order of Civil Court was not void order being having no jurisdiction in the matter?
- 11. Whether respondent has not willfully absented himself and not reported to his place of transfer?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

- 1. That the respondent was employee of Communication and Works Division was posted in the Office of Executive Engineer Division, Mardan was transferred to the Office of Executive Engineer C&W Division Dir Lower vide order dated 15/3/2017 and was relieved of his duties by XEN Building Division Mardan vide letter dated 28/3/2017.
- 2. That the respondent claimed to be President of All Pakistan Clerk Association but the petitioners denied the same as no election was

announced/ scheduled by the competent Authority of Administration Department hence the claim of respondent to be President of All Pakistan Clerk Association is baseless.

3. That the respondent alleged to have filed departmental appeal to petitioner No.1 but petitioners deny the same.
4. That respondent filed civil suit before the Senior Civil Judge, Mardan in which initially stay was granted but later on was dismissed as withdrawn on 17/10/2017. The respondent filed another civil suit before the learned Senior Civil Judge (A/Q) Dir Lower at Timergara which was returned vide order dated 17/1/2019 and respondent filed Service appeal No.85/2019 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar against the transfer order dated 15/3/2017 which was dismissed as withdrawn on 31/5/2019.
5. That due to non-compliance of the transfer order dated 15/3/2017 the respondent was proceeded for misconduct for not reporting at his place of duty and charge sheet and statement of allegations were issued to the respondent and an inquiry Officer was appointed vide memo dated 14/11/2017. The inquiry Officer conducted proper inquiry and submitted its recommendation to the Competent Authority.
6. That the Competent Authority issued show cause notice to the respondent and consequently major penalty of compulsory retirement was imposed on the respondent. *Personal hearing?*
7. That the respondent filed departmental appeal but was not considered having no sound ground.
8. That being aggrieved respondent filed Service Appeal No.1153/2019 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in which comments of petitioners were called which were filed by denying the stance of the respondent.
9. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted Service Appeal No.1153/2019 of respondent vide impugned judgment/ order dated 12/10/2021.

10. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12/10/2021 in Service Appeal No.1153/2019, prefer this CPLA before this august Court.
11. That the petitioners seek leave to appeal against the impugned judgment / order dated 12/10/2021 in Service Appeal No.1153/2019.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order dated 12/10/2021 in service appeal No.1153/2019 may graciously be granted.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

05

①

05

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1153/2019

Date of Institution ... 17.09.2019

Date of Decision ... 12.10.2021

Aurangzeb Kashmiri, Ex-Junior Clerk, Office of the Executive Engineer, Building Division Mardan, R/o Sheikh Maltoon, Street No. 15, House No. S-326, Mardan.
... (Appellant)

VERSUS

The Secretary Govt. of Khyber Pakhtunkhwa, Communication and Works Department, Civil Secretariat, Peshawar and three others.
... (Respondents)

MR. KHUSH DIL KHAN
Advocate

... For Appellant

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

... For respondents

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the case are

that the appellant was employee of respondents department holding the post of junior clerk. The appellant was also officer bearer of APCA, Khyber Pakhtunkhwa, holding the position of President in the Cabinet. The appellant was transferred vide order dated 15-03-2107 to Dir Lower, against which he filed departmental appeal dated 28-03-2017, but the same remained unattended. A declaratory suit was also filed by the appellant against the impugned transfer order in the court of civil judge, which was admitted and status quo was granted, but the appellant sought withdrawal of the same and filed service appeal No. 85/2019 in this Tribunal by

challenging his transfer order, but in the meanwhile the impugned order of imposition of major penalty of compulsory retirement from service was passed vide order dated 14-05-2019, hence his service appeal was dismissed being infructuous. The appellant filed departmental appeal dated 20-05-2019, which was not responded within the statutory period of 90 days, hence the instant service appeal with prayers that the impugned order dated 14-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the allegations leveled against the appellant are baseless, does not constitute mis-conduct entailing major penalty of compulsory retirement, hence the impugned order is not sustainable and liable to be set aside; that the appellant has never defied his transfer order intentionally or deliberately, but on the basis of status quo granted by the Court of Civil Judge, he retained the charge of his duty, which he regularly performed and was paid monthly salaries, thus the disciplinary proceedings were malafiedly initiated against the appellant for ulterior motive and he was politically victimized for his union activities being the president of APCA, therefore, the impugned order is unfair, malafidies, without lawful authority and liable to be set aside; that major penalty was imposed upon the appellant without holding a regular inquiry and the apex court in plethora of judgment have held that regular inquiry is must before imposition of major penalty; that the charges against the appellant are not so grave as to impose major penalty of compulsory retirement, which is harsh and does not commensurate with nature of the charges; that charge sheet/statement of allegation was served upon appellant on 14-11-2017, while show cause notice was served on 29-11-2018, whereas impugned order was passed and issued on 14-05-2019 with inordinate delay, without legal justification, thus the proceedings and the subsequent impugned order has no legal sanctity and has lost it venom and sting; that the appellant was condemned unheard, the impugned order was passed at back of the appellant, no proper opportunity of defense was provided to the appellant, as the allegation pertaining to factual

controversies which could only be resolved through regular inquiry, which however was not done in case of the appellant, thus the impugned order is illegal and not sustainable in the eye of law; that respondent No 1 has not acted in accordance with law and rules and unlawfully retained the departmental appeal of appellant without any decision which is unfair and unjust.

03. Learned Deputy District Attorney for respondents has contended that being civil servant, the appellant is supposed to serve anywhere within or outside the province, as enunciated in Section-10 of Civil Servant Act, 1973; that the appellant was relieved of his duty with effect from 28-03-2017, but he did not report arrival at the place of his transfer; that due to non-compliance of transfer orders, the appellant was issued charge sheet/statement of allegations by appointing an inquiry officer vide order dated 14-11-2017; upon completion of inquiry, show cause notice was served upon the appellant, to which he responded, but his reply was not found convincing, hence taking a lenient view and keeping in view his length of service, the appellant was awarded with major punishment of compulsory retirement from service.

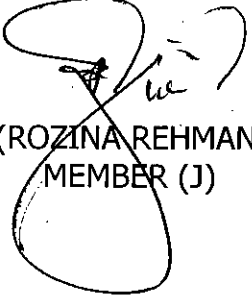
04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant obtained status quo against his transfer order dated 15-03-2017 and retained his place of posting as well as continued to receive his salaries as well. He withdrew the suit with the understanding that his transfer order will be cancelled by the respondents as per their commitments made with him, but instead, the respondents initiated disciplinary proceedings against him after withdrawal of declaratory suit. Placed on record is a fact finding inquiry, which fully supports the stance of the appellant regarding his retention on his previous post, which shows that the appellant did not disobey orders of his transfer, but stayed at his post due to orders of court. We have found that no regular inquiry was conducted against the appellant, nor he was afforded proper opportunity of defense, rather piecemeal proceedings have been conducted against


him, as charge sheet/statement of allegations has been served upon him on 14-11-2017, whereas show cause notice was served upon him on 29-11-2018 after lapse of almost one year, whereas impugned order was passed on 14-05-2019 after delay of another 6 months, which shows malafide on part of the respondents, as the appellant was representing his co-employees through All Pakistan Clerk Association, hence respondents had developed a grudge towards the appellant for his activities for welfare of the clerk community, which ultimately resulted into award of major punishment of compulsory retirement from service, which however was not warranted. It otherwise appears a harsh penalty, even if the appellant had not complied such transfer order without aide of verdict of a court.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 14-05-2019 is set aside and the appellant stands re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
12.10.2021



(ROZINA REHMAN)
MEMBER (J)



(ATIQ UR REHMAN WAZIR)
MEMBER (E)

ORDER

12.10.2021

Mr. Khush Dil Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Haseeb Ullah Superintendent for respondents present. Arguments heard and record perused.

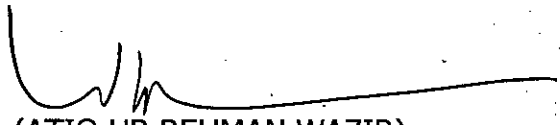
Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 14-05-2019 is set aside and the appellant stands re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

12.10.2021



(ROZINA REHMAN)
MEMBER (J)



(ATIQ UR REHMAN WAZIR)
MEMBER (E)

08.09.2021

Appellant alongwith his counsel Mr. Khushdil Khan, Advocate, present. Mr. Riaz Gul Admin Officer alongwith Mr. Muhammad Rasheed Deputy District Attorney for the respondents present.

Learned Deputy District Attorney sought adjournment on the ground that the brief of the instant appeal was handed over to him very lately, therefore, he has not made preparation for arguments. Learned counsel for the appellant having no objection on the adjournment. Adjourned. To come up for arguments before the D.B on 16.09.2021.



(ATIQ-UR REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

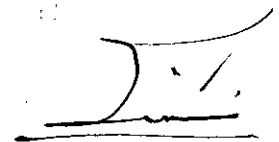
16.09.2021

Appellant in person present. Mr. Riaz Gul, Admin Officer alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is ill. Adjourned. To come up for arguments before the D.B on 12.10.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

APPELLANT'S MOTION
FOR REVERSAL

THE PEOPLE OF THE STATE OF CALIFORNIA
VS. [REDACTED]

THE PEOPLE OF THE STATE OF CALIFORNIA

VS. [REDACTED]

APPELLANT'S MOTION FOR REVERSAL OF THE

JUDGMENT OF THE TRIAL COURT

IN AND TO THE COUNTY OF [REDACTED]

APPELLANT'S MOTION FOR REVERSAL OF THE

JUDGMENT

28.4.2021


Due to COVID-19, the case is adjourned
to 30.8.2021 for the same.

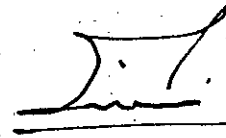

Nadeem

30.08.2021

Appellant alongwith his counsel Mr. Khush Dil Khan, Advocate, present. Mr. Riaz Gul, Admin Officer alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that due to some engagements, he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 08.09.2021.


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

01.02.2021

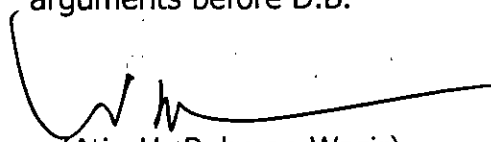
Due to summer vacation, case is adjourned to 01.02.2021 for the same as before

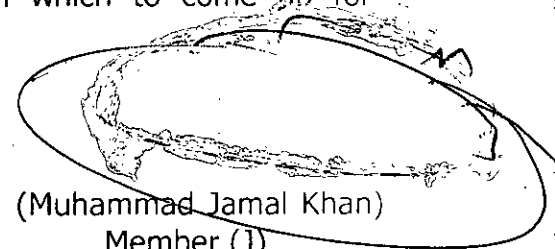

Reader

01.02.2021

Appellant is present in person. Muhammad Rasheed learned Deputy District Attorney alongwith Riaz Admin Officer for respondents present.

Appellant informed the bench that his counsel could not attend the Tribunal today due to a blockade of the road held by the procession out pouring flow from the suburban flanks of the city and requested for adjournment. The request is acceded to and the appeal is adjourned to 15.03.2021. On which to come up for arguments before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)



(Muhammad Jamal Khan)
Member (J)

15.03.2021

Appellant in person and Mr. Muhammad Rashid, DDA alongwith Riaz Gul, Admin Officer for the respondents present.

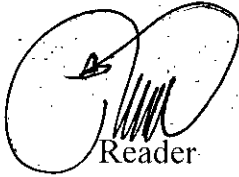
Former requests for adjournment as his learned counsel is not available today.

Adjourned to 28.04.2021 before D.B.


(Mian Muhammad)
Member(E)


Chairman

05.08.2020 Due to summer vacation case to come up for the same on
07.10.2020 before D.B.

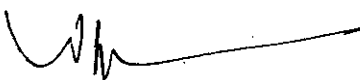


Reader

07.10.2020 Appellant present through counsel.

Zara Tajwar learned Deputy District Attorney for
respondents present.

Former requests for adjournment. Adjourned. To come up
for arguments on 28.10.2020 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

28.10.2020 Proper D.B is on Tour, therefore, the case is
adjourned for the same on 30.12.2020 before D.B.



Reader

06.02.2020

Counsel for the appellant and Addl. AG alongwith Muhammad Zaib, Assistant for the respondents present.

Representative of respondents has furnished comments, which are placed on record. To come up for rejoinder and arguments on 01.04.2020 before the D.B.


(Ahmad Hassan)
Member

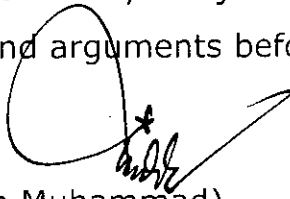
01.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 09.06.2020 for same as before.


Reader

09.06.2020

Clerk to counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Riaz Gul, Admin Officer for the respondents present. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is ill and cannot attend the Tribunal today. Adjourned to 05.08.2020 for rejoinder, if any, and arguments before D.B.


(Mian Muhammad)
Member


(M. Amin Khan Kundi)
Member

23.10.2019

Counsel for appellant present.

Contends that major penalty of compulsory retirement was imposed upon the appellant through order dated 14.05.2019, while no regular inquiry was ever conducted against him. The impugned order was result of a fact finding/formal inquiry wherein the appellant was not provided with opportunity to put forth his defense. Further contends that the allegation, as contained in the impugned order, regarding non-compliance of posting order dated 15.03.2017 was also misconceived. Initially, an order of maintenance of status-quo was passed by a civil court on 28.03.2017 which continued till withdrawal of the said suit by the appellant. Subsequently, a service appeal was preferred to Service Tribunal wherein also the order of transfer of the appellant was suspended. On that score as well the impugned order is not sustainable.


The appeal in hand, is admitted to regular hearing subject to all just exceptions in view of available record and arguments of learned counsel. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/ comments on 23.12.2019 before S.B.


Chairman

23.12.2019

Appellant in person present. Addl: AG alongwith Mr. Naqeebullah, SDO and Mr. M. Zeb, Assistant for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 06.02.2020 before S.B.


Member

24/10/19

Appellant Deposited
Security & Process Fee

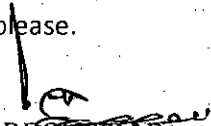
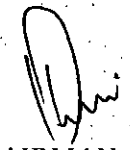
8/11/19

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1153/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/09/2019	<p>The appeal of Mr. Aurangzeb Kashmiri presented today by Mr. Khushdil Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 17/9/19</p>
2-	18/09/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/10/19</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1153 /2019

Aurangzeb Kashmiri,
Ex-Junior Clerk,
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan.....Appellant.

Versus

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat,
Peshawar and others.....Respondents.

INDEX

S.N	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal.			1-5
2.	Copy of office order whereby appellant was transferred from the office of respondent No.3 to the office of Executive Engineer, C&W Division, Dir Lower.	15-03-2017	A	0-6
3.	Copy of departmental appeal against the impugned transfer order before the respondent No.1.	28-03-2017	B	7-8
4.	Copy of the plaint with status quo order.	17-04-2017	C	9-12
5.	Copy of Order Sheet of this Hon'ble Tribunal whereby the Service Appeal No. 85 / 2019 was dismissed as infructuous.	31-05-2019	D	0-13
6.	Copy of the covering letter with the copies of charge sheet and statement of allegations communicated to appellant by the respondent No.2	14-11-2017	E	14-17
7.	Copy of reply to Charge Sheet by the appellant.	20-11-2017	F	18-19
8.	Copy of covering letter with copies of Show Cause Notice and inquiry report.	29-11-2018	G	20-25
9.	Copy of reply to Show Cause Notice by the appellant.	06-12-2018	H	26-27
10.	Copy of the impugned order whereby appellant was compulsory retired with immediate effect.	14-05-2019	I	0-28
11.	Copy of departmental appeal with registered receipt.	20-05-2019	J	29-32

Through

Appellant

Khush Dil Khan
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 091-2213445

Dated: 14 / 09 / 2018

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1153 /2019

Aurangzeb Kashmiri,
Ex-Junior Clerk,
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan.....Appellant.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1763

Dated 17-9-2019

Versus

1. The Secretary,
Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat, Peshawar.
2. The Chief Engineer (Centre),
Communication and Works Department,
Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer,
Communication and Works Department,
Building Division, Mardan.
4. Mr. Muhammad Israr,
Inquiry Officer / The then Executive Engineer,
Communication and Works Department,
Building Division-II, Peshawar.....Respondents.

Filed to-day

Registrar

17/9/19

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 14-05-2019 THEREBY IMPOSED MAJOR PENALTY OF COMPULSORY RETIREMENT "UPON APPELLANT" WITH IMMEDIATE EFFECT UNDER RULE 14(5)(ii) OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (Efficiency and Discipline) RULES, 2011 AGAINST WHICH HE FILED DEPARTMENTAL APPEAL UNDER REGISTERED POST DATED 20-05-2019 BUT THE SAME WAS NOT DISPOSED OFF WITHIN STATUTORY PERIOD OF 90 DAYS .

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:

1. That appellant was employee of the respondent department holding the post of Junior Clerk, working in the office of respondent No.3. In addition, he is also an office bearer of APCA, Khyber Pakhtunkhwa holding the position of President in the Cabinet.
2. That vide order dated 15-03-2017 (**Annexure-A**), appellant was transferred to the office of Executive Engineer, C&W Division, Dir Lower against which he filed departmental appeal before the respondent No. 1 on 28-03-2017 but the same was remained unattended. Copy of departmental appeal is attached as **Annexure-B**.

It is pertinent to mention that a declaratory suit against the impugned transfer order was also filed by the appellant in the Court of Civil Judge-VII, Mardan, which was admitted and order of status quo was passed. Later on, the appellant has withdrawn the same and filed a Service Appeal No. 85 / 2019 in this Hon'ble Tribunal therein he challenged the impugned orders of his transfer but when instant impugned order of his compulsory retirement was passed then the Service Appeal No. 85 / 2019 was dismissed being infectious vide order dated 31st May, 2019. Copies of plaint with status quo order attached as **Annexure-C** and Order Sheet dated 31-05-2019 attached as **Annexure-D**.

3. That during pendency of the above referred proceedings, the respondent No.2 had issued letter dated 14-11-2017 vide No. 75-E/1030/CEC/C&WD thereby served Charge Sheet with statement of allegations upon appellant to which he submitted

his reply on 20-11-2017. Copy of the covering letter with copies of Charge Sheet and statement of allegations are attached as **Annexure-E** and copy of reply is attached as **Annexure-F**.

4. That appellant was served with a Show Cause Notice vide covering letter No. 75-E/408/CEC/C&WD dated 29-11-2018 based on facts finding inquiry report conducted by respondent No.4 to which he submitted a detailed reply on 06-12-2018. Copies of covering letter with copies of Show Cause Notice and Inquiry Report are attached as **Annexure-G** and copy of reply attached as **Annexure-H**.
5. That without considering the reply of appellant and other material on the record, respondent No.2 acted in arbitrary manner and imposed major penalty of compulsory retirement upon the appellant with immediate effect vide order dated 14-05-2019 (**Annexure-I**) which was unjustified and tainted with malafide intention therefore, the same was challenged through Departmental Appeal dated 20-05-2019 under registered post by the appellant before the respondent No.1 but the same was not disposed of within statutory period of 90 days. Copy of departmental appeal with registered receipt attached as **Annexure-J**.

Hence the present appeal is submitted on the following amongst other **grounds:-**

- A. That the alleged allegations are baseless and unjustified, do not constitute misconduct entailing major penalty of compulsory retirement therefore the impugned order is not sustainable and liable to be set aside.

- B. The appellant is an obedient employee of the department and he never defied his transfer order intentionally, deliberately but on the basis of the status quo order of the Court of Civil Judge-VII, Mardan and he retained the charge of his duty which he regularly performed and paid monthly salaries. Thus the disciplinary proceedings were malafidely initiated against the appellant for ulterior motive and he was politically victimized for his union activities being the President of APCA. Therefore, the impugned order is unfair, malafide, without lawful authority and liable to be set aside.
- C. That in the case of appellant, a fact finding inquiry was conducted by the inquiry officer and on the basis of which a Show Cause Notice was issued to him and major penalty of compulsory retirement was awarded to him without holding regular inquiry. The fact finding inquiry can never be substituted thus the impugned order is illegal, without lawful authority, of no legal effect and liable to be set aside.
- D. That the charges against the appellant are not so grave as to impose major penalty of compulsory retirement which is harsh and do not commensurate with the nature of charges which is not sustainable under the law and rules on the subject and liable to be set aside.
- E. That in the case of appellant Charge Sheet was issued on 14-11-2017 while Show Cause Notice served upon him on 29-11-2018 and impugned order was passed and issued on 14-05-2019 with inordinate delay, without legal justification thus the proceedings and the subsequent impugned order has no legal sanctity and has lost its venom and sting.

- F. That the appellant was condemned unheard, the impugned order was passed at his back, no proper opportunity of defence was provided to him as the allegations pertaining to factual controversies which could only be resolved through regular inquiry which is not done in this case thus the impugned order is illegal and not sustainable being violative of principle of natural justice.
- G. That the respondent No.1 has not acted in accordance with law and rules on subject and unlawfully retained the departmental appeal of appellant without any decision which is unfair and unjust.

It is, therefore, humbly prayed that on acceptance of this service appeal, the disciplinary proceedings against the appellant may kindly be declared illegal, defective, malafide, without lawful authority and against the principle of natural justice as well the impugned order dated 14-05-2019 based on such defective proceedings may graciously be set aside and appellant to be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 20 / 09 / 2019



Office Of The Chief Engineer (Centre)
Communication & Works Department
Khyber Pakhtunkhwa Peshawar

No. 220-E / 1717 / CEC / C&WD

Dated Peshawar the 15/03/2017

Ammed A^o 12
-268

15-3-2017

OFFICE ORDER

The following posting/ transfer of Junior Clerks in the C&W Department. is hereby ordered, in the public interest, with immediate effect :-

Sl. No.	Name	From	To	Remarks
1.	Mr. Saleemur Rehman (Junior Clerk) ✓	O/O SE C&W Circle Mardan	Junior Clerk O/O XEN C&W Division Dir Upper	Existing Vacancy
2.	Mr. Aurangzeb-V (Junior Clerk)	Junior Clerk O/O XEN Building Division Mardan	Junior Clerk O/O XEN C&W Division Dir Lower	Vice # 3
3.	Mr. Aimal Khan (Junior Clerk) ✓	Junior Clerk O/O XEN C&W Division Dir Lower	Junior Clerk O/O XEN Building Division Mardan	Vice # 2

CHIEF ENGINEER (CENTRE)

Copy forwarded to the :-

- 1) Chief Engineer (North) C&W Department Peshawar.
- 2) Superintending Engineers C&W Circle Mardan / Dir Lower.
- 3) Executive Engineer Building Division Mardan.
- 4) Executive Engineers C&W Division Dir Lower / Dir Upper.
- 5) District Accounts Officers District Mardan / Dir Lower / Dir Upper.
- 6) Officials Concerned.

CHIEF ENGINEER (CENTRE)

Brief

order/sent 15-3-2017

Dept. In-charge 22-3-2017

do Sectry - 28-3-2017 = Relive

Stay Court 28-3-2017

2-9-2017

6-9-2017

17-10-2017 Case with Mr. 14-11-2017 10/01

ATTESTED

3-E

File

17/3

Est

Dairy No. 1454
Date 16-3-2017
A.O.
P.S.A.C.

He

7

To,

Appeal

Annex: B
P. 7

The ~~Chief~~ Secretary (C&W)
Khyber Pakhtunkhwa Peshawar

Subject: Representation/Departmental Appeal Against Order No.220-E/1717/CEC/C&WD Peshawar Dated 15-03-2017 Issued by your good Office vide which the petitioner/appellant transferred to office of XEN C & W Division Dir Lower is incorrect against law, facts and policy and in effective upon the rights of appellant and the said order is liable to be set-aside to the extent of appellant and the appellant be allowed to continue his services in his previous place of posting i.e office of XEN Building Division Mardan

Respectfully Sheweth,

The appellant humbly submits as under:-

1. That the appellant is posted in C&W Department as Junior Clerk in the office of XEN C & W Building Division Mardan in own pay scale against the post of Senior Clerk.
2. That the appellant is performing his duties to the entire satisfaction of his superiors and the service record of the appellant is spotless and blameless.
3. That the appellant is not involved in any kind of Departmental proceeding and it was to the utter shock and dismay when the appellant received the impugned order dated 15-03-2017. (Copy is attached as Annex A)
4. That the transfer order of the appellant is liable to set-aside on the following grounds.

GROUND

- A. That the appellant is the President of All Pakistan Clerks Association (APCA) Khyber Pakhtunkhwa hence the appellant is office bearer of an Association and as per notification of the Provincial Govt the office bearer cannot be transferred. (Copy of notification is attached as Annex B)
- B. That the wife of the appellant Mst Insha Bibi is posted in Education Department Mardan as Qaria BPS-16 at Govt Girls Centennial Model School Canal Road Mardan. (Copy of service certificate is attached as Annex C)
- C. That as per spouse policy it is mandatory, that both the official (spouse) will perform their duties at the same station hence the

ATTESTED

transfer order of the appellant is liable to set-aside. (Copy of spouse policy is attached as Annex D)

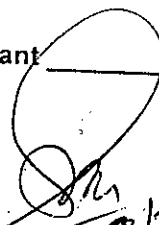
P. 8

- D. That the impugned transfer order is based on malafide intention which is evident from the said order.
- E. That as per PIFRA rules and ground realities and record there is no vacant post of Junior Clerk in C & W Building Division Mardan hence the official mentioned at Sr.No.3 Namely Aimal Khan Junior Clerk is wrongly adjusted against the post of appellant just to harras the appellant.
- F. That the impugned order is liable to be set-aside just to disturb the Association Activities of the appellant who has good reputation all over the province.

Therefore it is humbly prayed that by acceptance of the instant appeal the impugned order may kindly be set-aside to the extent of appellant and issue order to continue his services in his previous place of posting i.e. office of XEN C & W Building Division Mardan.

Dated 28-03-2017

Appellant


Aurangzeb
(Provincial Resident)
APCA Khyber
Pakhtunkhwa

28/3/2017


ATTESTED

A.P. 9



سولناط

قد علما علیہ السلام اللہ تعالیٰ مودعہ ۱۷/۱۱/۱۷

کے لیے قورانی جائے - نیز دعووں کا پی

تلف ہے - در فوائسہ حکم امتناعی مشورہ مشیل ہے -
حالات جون کے تون رہے -

(Handwritten signature)

CJ - ۱۱ - Mardan

Asghar Ali Salarzai
Cj-VII/JM Mardan

ATTESTED

دعویٰ عدلیہ میں درج ہے۔

- 1 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔
- 2 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔
- 3 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔

- 4 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔
- 5 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔

- 6 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔
- 7 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔

8 - یہ کہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔

نہ ہے۔ بلکہ عدلیہ میں درج ہے کہ ^{نق} حقیقتوں کو منہ پر لکھ کر دیا گیا ہے اور منہ پر لکھ کر لکھنا ہے۔

ATTESTED

P. 11
۹۔ یہ کہہ کر خود مدعی علیہ کی کیا تہا کہ وہ علیہ نام نہاد کی شہادت کو قبول کرے
ماز آئے لیکن وہ اپنی دلیل کے اس خلاف الطاری ہے جس
سے خود نا انصافی وغیرا لاحق ہوئی۔

10۔ یہ کہ ماہیت لہذا کو رد و ابطال سے متعلق و بنا کے دعویٰ کے عنوان
عسری دعویٰ بالہ ہے۔

اس دعویٰ کے دائرہ میں مستحق عدلیہ کے اصول و ضوابط کے تحت مدعی اور مدعا
مدعی علیہ کے مطابق عنوان عسری دعویٰ ہے اور فرما رہے۔
تین دنوں کے درمیان جو فریقین کے درمیان ہو رہے ہیں وہ ان کے فریقین کے

اور تکریم - مدعی
نور احمد خان
HAKIM SHAH
ADVOCATE HIGH COURT
Peshawar et Mardan

بہان لطف
لہذا عنوان بالہ
تین دنوں کے درمیان
جو فریقین کے درمیان

نور احمد خان کے مدعی کے عنوان کے تحت ہے

مدعی
JMA

6112

ATTESTED

659
29/3/17

گواہان درویشی سرگودھا

اور نگرین کشتی (بیم) صیف اظہار و شہادت

دعویٰ استغراق حق و مشورہ

درخواست حکم اختتامیہ تاکثیری ہمہ صروف و مدعا علیہ کمزورہ مکمل
تھا و مدعیہ ہمہ عملدرآمد کرنے - بخواب روکنے - و باج لینے
اند و تکرر استغاثی کاروائی کرنے سے تامل فرما کر
منع و باز رکھ

ضمانت علی 1

- 1 - یہ کہ عسری دعویٰ معراج درویشی ہذا ایک دائرہ کار میں ہے
- 2 - یہ کہ مدعیہ درجی گروہ میں شہادتیں ہیں کہ مدعیہ کا دعویٰ ابطال ہے
- 3 - یہ کہ تازان سپورٹ مدعیہ کے حق میں ہے۔ مدعیہ کے حق میں تازان ہے
- 4 - یہ کہ اگر مدعیہ علیٰ غلطی سے اپنے غرض سے حساب نہیں کرتی تو مدعیہ کو ناقابل
تقدیر لقمہ بیروہ -

خبرہ

اور نگرین کشتی
نذیر احمد صاحب
[Signature]

ATTESTED

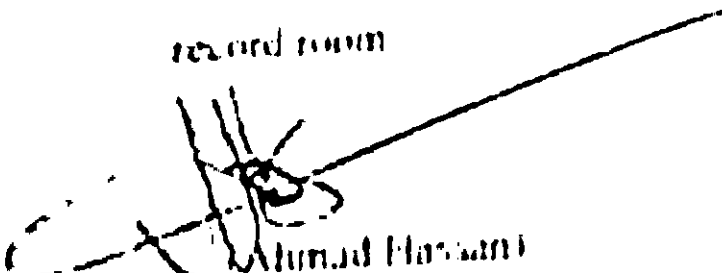
Annex: D P. 13

31 05 2019
Learned counsel for the appellant, Mr. Usman Chani learned District Attorney alongwith Riaz Gul Admin Officer for official respondents and learned counsel for private respondent No.6 present

Representative of official respondents furnished office order dated 14 05 2019 whereby major penalty of compulsory retirement has been imposed upon the appellant.

Learned counsel for the appellant, while referring to the office order dated 14 05 2019 mentioned above, seeks withdrawal of the present service appeal

In view of above, the present service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room


(Muhammad Hameed)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED
31 05 2019

ATTESTED

14-05-2019
214-11-2017

6-2 years / 4 years

Annex E

P. 14



OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

No. 75-E / 1030 / CEC / C&WD

Dated Peshawar the 14 / 11 / 2017

To

Engr. Muhammad Israr ✓
Executive Engineer
Building Division-II Peshawar

Subject:- INQUIRY AGAINST MR. AURANGZEB JUNIOR CLERK

Please refer to the subject noted above and to state that the undersigned (Competent Authority) has been pleased to appoint you as Inquiry Officer to conduct formal inquiry under the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011, against Mr. Aurangzeb Junior Clerk O/O Executive Engineer Building Division Mardan.

Copies of Charge Sheet/ Statement of Allegations duly signed are enclosed herewith in duplicate, with the request to serve these upon the above named official and initiate proceedings against him under the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011, and submit report complete in all respects to this office within a week time positively, so as to proceed further in the matter.

DA/As above:

CHIEF ENGINEER (CENTRE)

Copy to the: -

1. Chief Engineer (North) C&W Department Peshawar.
2. Superintending Engineer C&W Circle Mardan.
3. Executive Engineer Building Division Mardan alongwith a copy of Charge Sheet & Statement of Allegation for his office record and reference.
4. Mr. Aurangzeb, Junior Clerk O/O XEN Building Division Mardan alongwith a copy of Charge Sheet & Statement of Allegations, with the direction to appear before the Inquiry Officer on the date & time fixed by him.

DA
for SL NO. 324

ACCESTED

CHIEF ENGINEER (CENTRE)

P. 15



2. For the purpose of Inquiry against the said accused with reference to the above allegations, an Inquiry Officer/Inquiry Committee, consisting of the following, is constituted under Rule-10(1)(a) of the ibid rules:-

Muhammad Israr XEN Bldg Division-II

3. The Inquiry Officer/ Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations 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 fixed by the Inquiry Officer/Inquiry Committee.


CHIEF ENGINEER (CENTRE)
C&W DEPARTMENT PESHAWAR
(COMPETENT AUTHORITY)


ATTESTED

To

The Chief Engineer (Centre),
Communication & Works Department,
Khyber Pakhtunkhwa, Peshawar.

Annex: F

P. 18

Through Inquiry Officer.

Sub:- REPLY TO CHARGE SHEET WITH STATEMENT OF ALLEGATION VIDE LETTER DATED 14-11-2017.

Sir,

In reference your letter No. 75-E/1030/CEC/C&WD dated 14-11-2017 I herewith submit the requisite reply on following facts and grounds for your kind consideration.

1. That I am Senior Junior Clerk having excellent service record and also office bearer of Clerk Association (APCA) holding the position of President.
2. That without cogent reason, I have been transferred from the office of Executive Engineer, C&W Division Mardan to the Office of Executive Engineer, C&W Division Dir Lower which was prompted by political influence which I had challenged in the Court of Civil Judge-VII, Mardan and status quo was granted. Meanwhile I also have filed departmental representation before the Secretary, C&W Department, Khyber Pakhtunkhwa. During this period I was regularly performed my duties and receiving monthly salaries but then your office issued to me Charge Sheet with statement of allegation containing of no specific charges which is herewith denied.
3. That the alleged allegations are baseless and do not constitute misconduct and based on political victimization on account of my association activities which is not sustainable. Moreover I am an obedient employee of the department and never refused the impugned transfer order deliberately but on the basis of order of status quo of the Court I retained the charge of my seat.

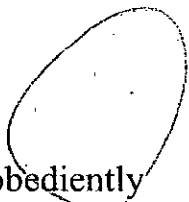

ATTESTED

P.19

It is therefore, humbly prayed that on acceptance of this reply the Charge Sheet with Statement of allegations may kindly be withdrawn in the interest of justice.

Thanks

Yours obediently


Aurangzeb Kashmiri,
Junior Clerk,
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan

Dated: 20/11/2017




ATTESTED



CHARGE SHEET

P-16

1. I, Engr. Muhammad Ayub, Chief Engineer (Centre) C&W Department Peshawar, as competent authority hereby charge you, Mr. Aurangzeb, Junior Clerk O/O Executive Engineer Building Division Mardan as follows:-

- i. That on your transfer from the O/O XEN Building Division Mardan to the O/O XEN C&W Division Dir Lower vide order No.220-E/1717/CEC/C&WD dated 15/03/2017, you failed to report departure and assume the duties at the place of your posting.
- ii. You were officially relieved from the post at Mardan with effect from 28/03/2017 as per memo of XEN No.1739/3-E dated 28/03/2017, but failed to join duties at Dir lower as such.
- iii. Instead to comply with the orders, you filed a Civil Suit in the Civil Court against the Chief Engineer (North) C&WD to implead him as Respondent/ Defendant attent onally and got status-quo from the Court till the next date 17/04/2017 as fixed with the simple wording in Urdu as: -

مدعا علیہ بالائی اطلاع یا بی سوزہ 17/04/2017 کے لئے کرائی جائے۔
نیز دعویٰ کا پی لٹ ہے۔ اور در دست حکم امتناعی شمولہ مشل ہے۔
حالات جوں کے توں رہے۔

-sd- (In English)
Asghar Ali Salarzai
CJ-VII/JM Mardan

And has given a wrong impression to XEN of stay orders and with the manipulation of office hands, continued to received salaries.

2. By reasons of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Disciplinary) Rules, 2011, and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

ATTESTED



DISCIPLINARY ACTION

P-17

1. I, Engr. Muhammad Ayub, Chief Engineer (Centre) C&W Department Peshawar, as competent authority, am of the opinion that Mr. Aurangzeb, Junior Clerk O/O Executive Engineer Building Division Mardan has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011.

STATEMENT OF ALLEGATIONS

- i. That on his transfer from the O/O XEN Building Division Mardan to the O/O XEN C&W Division Dir Lower vide order No.220-E/1717/CEC/C&WD dated 15/03/2017, he failed to report departure and assume the duties at the place of his posting.
- ii. He was officially relieved from the post at Mardan with effect from 28/03/2017 as per memo of XEN No.1739/3-E dated 28/03/2017, but failed to join duties at Dir lower as such.
- iii. Instead to comply with the orders, he filed a Civil Suit in the Civil Court against the Chief Engineer (North) C&WD to implead him as Responderit/ Defendant attentionally and got status-quo from the Court till the next date 17/04/2017 as fixed with the simple wording in Urdu as: -

مدعا نامیہ بالا کی اطلاع یا اپنی مورخہ 17/04/2017 کے لئے کرائی جائے۔
نیز ذمہ داری کا پتہ ہے۔ اور درخواست حکم اتنا ہی شمولہ ہے۔
حالات جوں کے توں رہتے۔

-sd- (In English)
Asghar Ali Salarzai
CJ-VII/JM Mardan

And has given a wrong impression to XEN of stay orders and with the manipulation of office hands, continued to received salaries.

ATTESTED

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

No. 75-E / 408 / CEC / C&WD

Dated Peshawar the 29 / 11 / 2018

To

The Executive Engineer
C&W Building Division Mardan

Amex. G

P. 20

SUBJECT: SHOW CAUSE NOTICE

A Show Cause Notice regarding misconduct in the name of Aurangzeb Kashmiri Junior Clerk is sent herewith for further delivery and service upon the said official.

Please ensure that reply of the said Junior Clerk to the Show Cause Notice shall be obtained and submitted to this office at the earliest within the stipulated period.

DA As Above

CHIEF ENGINEER (CENTRE)

Copy to Mr. Aurangzeb Kashmiri Junior Clerk C/O Executive Engineer
C&W Building Division Mardan for information and needful.

A copy of the Show Cause Notice is also attached.

DA As Above

CHIEF ENGINEER (CENTRE)

عمران خان ولد اولاد کشمیری

ATTESTED

SHOW CAUSE NOTICE

P. 21

I, Engr. Muhammad Ayub Chief Engineer (Centre) C&W Department Peshawar, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, do hereby serve you, Mr. Aurangzeb Kashmiri, Junior Clerk O/O Executive Engineer C&W Division Dir Lower as follows:-

- 1 (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Officer for which you were given opportunity of hearing; and,
- (ii) On going through the findings and recommendations of the Inquiry Officer, the material on record and other connected papers including your defence before the inquiry officer..

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

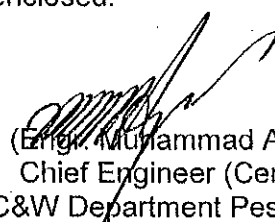
(b) guilty of misconduct

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Compulsory Retirement. under Rule-4 of the said rules.

3. You are thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven (07) days or not more than fifteen (15) days of its delivery, it shall be presumed that you have no defence to put in, and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the Inquiry Officer is enclosed.


(Engr. Muhammad Ayub)
Chief Engineer (Centre)
C&W Department Peshawar
(Competent Authority)z

ATTESTED

INQUIRY

P.22

Subject:-

INQUIRY AGAINST MR. AURANGZEB JUNIOR CLERK

Introduction:

The Chief Engineer (Centre) C&W Department Khyber Pakhtunkhwa, has appointed the undersigned as inquiry officer vide letter No.75-E/2030/CEC/C&WD, dated 14.11.2017 to conduct formal inquiry against Mr. Aurangzeb Junior Clerk o/o the Executive Engineer Building Division Mardan as per allegations against him.

Statement of Allegations:

- i. That on his transfer from o/o Executive Engineer Division Mardan to the o/o Executive Engineer C&W Division Dir Lower vide order No.220-E/1717/CEC/C&WD, dated 15.03.2017, he failed to report departure and assume the duties at the place of his posting.
- ii. He was officially relieved from the post at Mardan with effect from 28/03/2017 as per memo of Executive Engineer No.1739/3-E dated 28/03/2017, but failed to join duties at Dir lower as such.
- iii. Instead to comply with the orders, he filed a civil suit in Civil Court against the Chief Engineer (North) C&WD to implead him as respondent/ Defendant attentionally and got status-quo from the Court till the next date 17/04/2017.

Proceeding:

Vide this office letter No.1115/4-E, dated 22/11/2017(Annexure-A), Mr. Aurangzeb Kashmiri Junior Clerk in the office of Executive Engineer Building Division Mardan has directed to submit written reply of allegations against him alongwith complete record. They were reminded again and again telephonically. In response they submitted the reply vide letter No.1039/3-E, dated 12/06/2018(Annexure-B).

The reply of this office letter No.1245/1-H, dated 21/12/2017, to Executive Engineer Building Division Mardan for change proforma and salary statement was responded vide letter No.1152/3-E, dated 29/06/2018 (Annexure-C). Final record received to this office on 02.10.2018 (Copy attached).

ATTESTED

17/10/2017
H. C.

H.C.

H.C.

H.C.

CHIEF ENGINEER (CENTRE)

P-23

The Detail of record is as under.

- i. Appeal in Court of Civil Judge-VII, Mardan.
- ii. Court proceeding dated 17.11.2017. (Un-attested)
- iii. Letter of APCA.
- iv. Relieving letter of Executive Engineer Mardan.
- v. Office order of Transfer.
- vi. Office bearer of Association rules letter.
- vii. Notification of APCA, where Mr. Aurangzeb appointed as president of APCA body.
- viii. Change Proforma of April 2017.
- ix. Salary Slip of May 2018.

Fact Finding:

The record revealed that the official, Mr. Aurangzeb Junior Clerk, was transferred to office of the Executive Engineer C&W Division Dir, vide posting transfer order No.1717/CEC/C&WD, dated 13/03/2017 (Annexure-D).

In response to this order the accused official appealed to Chief Engineer Centre (Annexure-E) to set aside the order, allowing him to continue his service in the office of Executive Engineer C&W Dir Mardan. 29/3/17

On 29/03/2017, the official filed a suit against Chief Engineer C&W and Chief Engineer (North), in the Court of Civil judge-VII, where status-quo was granted (Annexure-F). 17/10/2017

1. On 02.09.2017, Chief Minister KPK, directed Secretary C&W with remarks "Please cancelled the transfer" (Annexure-G), which has been communicated officially to Secretary C&W Department KPK, vide letter No. SOVI/CMS/KPK/3-1/2017, dated 06.09.2017 (Annexure-H).
2. On 17.10.2017, the official /plaintiff in person withdrew his suit (Conditionally) and the suit was dismissed as withdrawn. The Court proceeding and application of official is attached (Annexure-I).

ATTESTED

CHIEF ENGINEER (CENTRE)

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H.C.

4/2

3. The Executive Engineer Building Division Mardan, submitted his statement vide his office letter No.1739/3-E, dated 28/03/2017, that the accused official has been relieved on 28/03/2017 (Annexure-J).

4. The Salary of the accused official was stopped by Executive Engineer C&WD Building Mardan through change proforma w.e.f 01/04/2017 (Annexure-K).

As revealed from the record and statement of the accused, the accused official failed to submit the departure from the office Executive Engineer Building Division Mardan, on the following grounds.

1. The wife of the official is serving in Education Department in the same District and under the spouse policy "Effort should be made to post both at one station (Rule is attached as Annexure-L).
2. Being President of APCA (Annexure-M), he should not be transferred for the year for which he is office bearer as such (Annexure-N).
3. Status-quo order issued from the Court of Civil Judge-VII Mardan till 17/04/2017 (Annexure-O).
4. Cancellation of the transfer order from the Chief Minister KPK (Annexure-P).

In response to the telephonic message, the Executive Engineer Building Division Mardan submitted his statement vide letter No.1739/3-E, dated 28/03/2017, that he has been relieved w.e.f 28/03/2017; but physically he was in the office of Executive Engineer Building Division Mardan and has been receiving salary from the office/District.

The change proforma has no token register No. (T.R.No.) and also has not been pursued by Executive Engineer Building Division Mardan to stop salary. Also the case was not pursued in the Court of Civil Judge-VII Mardan properly and not properly attended on due date, which need to be enquired from Executive Engineer Building Division Mardan.

ATTESTED

CHIEF ENGINEER (CENTRE)

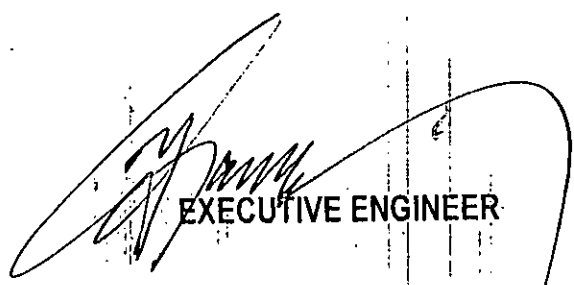
FE SR No. 39 H.C.

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Conclusion:-

The official has been transferred to the office of Executive Engineer C&W Division Dir Lower Vide Order No.220-E/1717/CEC/C&WD dated.15-03-2017. Status-quo was granted by Civil Judge VII District Mardan dated 17/04/2017 upto 17/10/2017. The plaintiff then submitted an application for the withdrawal of suit, mentioning that the high up has promised for cancellation of the transfer order and the court accordingly dismissed the suit as withdrawn.

However the official could not produces any cancellation order of the competent authority and the official failed to report departure and assume the duty at his place of posting after 17/10/2017.


EXECUTIVE ENGINEER

ATTESTED

FE SL No. 384

H.C.

CHIEF ENGINEER (CENTRE)

To

The Chief Engineer (Centre),
Communication & Works Department,
Khyber Pakhtunkhwa, Peshawar.

Annex. H
P 26

Sub:- REPLY TO SHOW CAUSE NOTICE.

Sir,

In reference your letter No. 75-E/408/CEC/C&WD dated 29-11-2018. I herewith submit the requisite reply on following facts and grounds for your kind consideration.

1. That I am Senior Junior Clerk having excellent service record and also office bearer of Clerk Association (APCA) holding the position of President.
2. That the alleged allegations are baseless and unjustified, do not constitute misconduct entailing major penalty of compulsory retirement which is also not commensurate with the charges and harsh.
3. That no regular inquiry has been conducted in my case, the inquiry officer carried out fact finding inquiry on the basis of which this Show Cause Notice was issued to me which has no legal sanctity as the fact finding inquiry is not substitute of regular inquiry therefore, the entire proceeding is defective and not sustainable.
4. That in my this case Charge Sheet was issued to me on 14-11-2017 while after lapse of one year, the fact finding inquiry was conducted on the basis of which this impugned Show Cause Notice was issued to me on 29-11-2018 with inordinate delay without cogent reason thus it has lost its venom and sting.
5. That I was condemned unheard and no proper opportunity was provided to me to defend my case which is against the principle of natural justice.

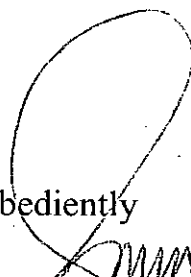
ATTESTED

P.27

It is therefore, humbly prayed that on acceptance of this reply the Charge Sheet with Statement of allegations may kindly be withdrawn in the interest of justice.

Thanks

Yours obediently


Aurangzeb Kashmiri,
Junior Clerk, 6/21/2019
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan

Dated: 06/12/2018


ATTESTED



Annex: 1 P-28
OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PUKHTUNKHWA PESHAWAR

No. 75-E / 454 / CEC / C&WD

Dated Peshawar the 14 / 05 / 2019

OFFICE ORDER

1. WHEREAS, Mr. Aurangzeb Kashmiri Junior Clerk (BS-11) O/O Executive Engineer C&W Building Division Mardan was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the Non-Compliance of posting orders dated 15/03/2017 from Building Division Mardan to C&W Division Dir Lower and as such guilty of Mis-Conduct.
2. AND WHEREAS, for the said act of misconduct he was served charge sheet/ statement of allegations and Show Cause Notice as well.
3. AND WHEREAS, Mr. Muhammad Israr, the then Executive Engineer Building Division-II Peshawar was appointed as Inquiry Officer who conducted the enquiry and submitted his report.
4. NOW THEREFORE, the undersigned being Competent Authority after having considered the charges, material on record, inquiry report of the Inquiry Officer, explanation of the official concerned, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, imposed major penalty of "Compulsory Retirement" upon Mr. Aurangzeb Kashmiri Junior Clerk (BS-11) C&W Department with immediate effect.


CHIEF ENGINEER (CENTRE)

Copy forwarded to the:-

1. Chief Engineer (North) C&W Department Peshawar.
2. Superintending Engineers C&W Circle Mardan/ Dir Lower.
3. Executive Engineer C&W Building Division Mardan.
4. Executive Engineer C&W Division Dir Lower.
5. District Accounts Officers, District Mardan/ Dir Lower.
6. Mr. Aurangzeb Kashmiri C/O XEN C&W Building Division Mardan.


ATTESTED


CHIEF ENGINEER (CENTRE)

To

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat, Peshawar.

20-5-19

Arshad
20-5-19

Amal: J

P. 29

Through PROPER CHANNEL

Subject: DEPARTMENTAL APPEAL UNDER RULE 3 OF THE
KHYBER PAKHTUNKHWA CIVIL SERVANTS
(APPEAL) RULES, 1986 READ WITH SECTION 22
OF THE KHYBER PAKHTUNKHWA CIVIL
SERVANTS ACT, 1973 AGAINST THE IMPUGNED
ORDER DATED 14-05-2019 PASSED BY THE CHIEF
ENGINEER (CENTRE) THEREBY AWARDED
MAJOR PENALTY OF COMPULSORY
RETIREMENT UPON APPELLANT WITH
IMMEDIATE EFFECT.

Respected Sir,

1. That I / appellant am the employee of your department holding the post of Junior Clerk working in the office of Executive Engineer C&W Building Division, Mardan. in addition I am also an office bearer of APCA Khyber Pakhtunkhwa holding the position of President in the Cabinet.
2. That on 15-03-2017 I / appellant was transferred to the Office of Executive Engineer C&W Division, Dir Lower from the Building Division. Mardan. Since this transfer order was premature, prompted by political interference and also violative of the policy on subject therefore, I immediately filed a declaratory suit with the temporary injunction in the court of Civil Judge Mardan in addition to departmental appeal. The Learned Civil Judge has entertained the case and also granted **status quo** in my favour vide order dated 17-04-2017 which was later on withdrawn by me on the assurance of the Executive Engineer.

ATTESTED

Om

3. That meanwhile the cases of Junior Clerks including me were processed by the authority of Building Division, Mardan for further promotion to the posts of Senior Clerk. When the order of promotees was issued on 03-10-2018 therein I not only ignored of due promotion on merit but also my earlier transfer order was restored.

B 30

4. That I/ appellant filed a fresh civil suit against that impugned order dated 03-10-2018 in the competent court of law which was stayed by the Hon'ble Court. Subsequently on the question of jurisdiction the suit was returned to me on 17-01-2019. Here the statutory period of 90 days of disposal of my departmental appeal was also completed so immediately filed Service Appeal No. 85 of 2019 and the impugned order of my transfer was also suspended on 08-02-2019.

5. That during the stay period granted by the competent court of law, the Chief Engineer (Centre) C&W department, Khyber Pakhtunkhwa issued an **office order dated 14-05-2019** thereby I was compulsory retired on the ground of non compliance of posting order dated 15-03-2017.

Hence this departmental appeal is submitted on the following grounds;

A. That the Chief Engineer (Centre) has misconceived my case and passed the impugned order in harsh manner and in violation of the law and rules for the reasons;

i. That when the transfer order was suspended by competent court of law then the question of non compliance does not arise and that is why I was allowed working in the original place of work and also paid monthly salaries regularly.

ii. That the authority mentioned in the impugned order that an inquiry was conducted but no such regular inquiry was



ATTESTED

carried out and if any inquiry conducted then the same made at my back.

P-31

- iii. That I am obedient servant and my performance is excellent but due to political grudges with the sitting Provincial Minister it was done against me which is not fair, not sustainable and liable to be set aside.
- iv. That the alleged non compliance of transfer order does not constitute the offence of misconduct.
- v. That I condemned unheard and the impugned order passed at my back without providing a fair opportunity of defence and even personal hearing was also not given to me which is illegal and against the principal of natural justice.
- vi. That the punishment is harsh and not commensurate with the charge and malafidely awarded the major penalty which is not warranted and liable to be set aside.

It is therefore humbly prayed that on acceptance of this departmental appeal, the impugned order of my compulsory retirement may kindly be cancelled and reinstated me in service with all back benefits.

Yours faithfully,

Aurangzeb Kashmiri
Junior Clerk,
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan.

Dated: 20/5/2019

ATTESTED

WAKALAT NAMA

IN THE COURT OF

12-P. Sana Tribunal

Aurangzeb Kashmiri

Ex. Junior Clerk of X & Y Co. in Mardan Appellant(s)/Petitioner(s)

VERSUS

The Secretary C-15 Dept

12-P. Sana & others

Respondent(s)

I/We Aurangzeb Kashmiri do hereby appoint Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this

Attested & Accepted by

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion
Off: Tel: 091-2213445

[Signature]
Signature of Executants

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No-1153/2019

1. **Aurangzeb Kashmiri**
R/O Sheikh Maltoon,
Street # -15, House No-S/326
Mardan.

(Ex-Junior Clerk of Building Division Mardan).....**Appellant**

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa Communication & Works Deptt: Peshawar.
2. The Chief Engineer (Centre) C&W Deptt: Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineers, Communication & Works Deptt., Building Division Mardan.
4. Mr. Muhammad Israr, Inquiry officer/The then Executive Engineer, C&W Deptt:
Building Division-II, Peshawar**Respondents**

COMMENTS OF OFFICIAL RESPONDENTS

PRELIMINARY OBJECTION

1. The Appellant has got no cause of action to file the instant Appeal.
2. This Hon'able Tribunal has got no jurisdiction in such cases to entertain the appeal
3. The Appellant has not come to the Tribunal with clean hands.
4. The Appeal is malafide and and not maintainable in the present form.
5. The Appeal is bad for Mis-Joinder & Non-Joinder of Necessary parties.
6. The Appeal is frivolous and vexatious, the respondent's have right to receive special cost.
7. That the appeal is badly time barred.

ON FACTS

1. Correct to the extent, appellant was Civil Servant and employee of C&W Deptt, but it is incorrectly stated working in the O/O Respdt-3. Actually the appellant was posted-out from Mardan and transferred to the O/O XEN C&W Division: Dir Lower vide posting order No. 220-E/1717/CEC/C&WD dated 15/03/2017, as annexed-A with Service Appeal, at page-6. However being Civil Servant, he has to serve any where within or outside the Province in any post under the Federal Govt, or any Provincial Govt of KP as annunciated in the Section-10, Civil Servant Act, 1973. And how it can be said he was Office Bearer of APCA holding position as its so called President, when the competent Authority in Administrative Deptt: has not announced/scheduled the proper Election. On the others, appellant was relieved of his duties by the XEN Building Division Mardan w.e.f 28-03-2017 as per informatory letter No. 1739/3-E dated 28-03-2017 (Annexed-I).
2. The same as replied in para-1 above. So far the stance of appellant, filed departmental appeal to Respdt-1 (Secretary C&W) was not processed through proper channel, might sent directly without adopting procedure. For the rest of statement as held in this para-2 of Service Appeal, not needs to be commented

having no weightage. The appellant himself stated that Appeal/Suit withdrawn and has been declared infructuous by the Civil Courts and then by this Honorable Service Tribunal on 31-05-2019.


3. Correct to the extent that due to non-compliance of transfer/posting order as expressed above, appellant was issued a Charge Sheet and Statement of Allegation, by appointment of an Inquiry officer vide Memo dated 14/11/2017. Instead to have submitted reply to the inquiry officer, appellant managed his reply addressing to Respd-2 (Chief Engineer).
4. Correct to the extent that after the completion of Inquiry since conducted against him, the Respd-2 (Chief Engineer Centre) as competent Authority issued a Show Cause Notice upon the appellant vide memo dated 29/11/2018 (since Annexed-G) with the Service Appeal, where the Appellant was informed of the penalty, tentatively decided "Compulsory Retirement".
5. Being Competent Authority, after having all Pros and cons of the case proceedings, replies of the accused, the Respondent-2 (Chief Engineer) retired the accused "Compulsory" under rule-14 (5) (ii) of the Khyber Pakhtunkhwa, Civil Servants (Efficiency and Discipline) Rules, 2011 keeping in view his length of Service in order to avail Pensionary Benefits etc. Although the appellant preferred APPEAL before Respondent-1 (Secretary C&W) either in person or by Registered post, not considered and filed having no validity or sound grounds thereto.

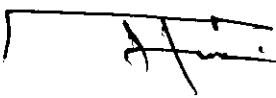
AGAINST GROUNDS

- A- Incorrect, the treatment as well as Appellant conduct noticed from time to time and his constant attitude the actions taken by the Competent Authority are in line with the procedural requirements.
- B- Incorrect and mis-conceiving, when any status quo granted was withdrawn, later-on. Thus the suit pending adjudication in Civil Court was not filed in the proper forum. The Appellant should have actualized the posting orders at all. Even the case thereafter filed in this Honorable Tribunal was too late. Further the Gov/Deptt. has no relevancy with the affairs of APCA activities. The action taken against, is fair and not malafide on the part of Competent Authority under the relevant rules/regulations.
- C- Incorrect regular inquiry was conducted, the appellant was provided all opportunities to defend himself but he failed to do so. The speculation, of Appellant, impugned order is illegal, without lawful authority or having no legal effect is baseless, not warranted to be taken/construed correct one.

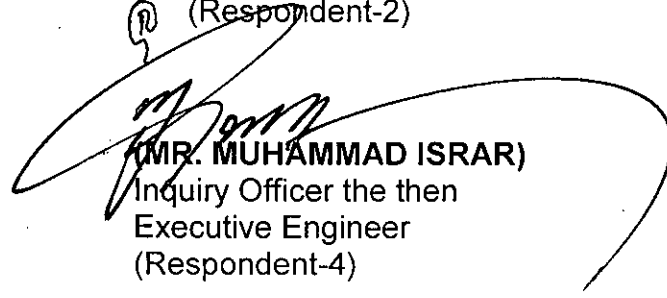
- D- After conducting regular inquiry the appellant has been proved to have committed misconduct hence the impugned order was issued.
- E- Incorrect, Any inordinate delay as assumed in this Para-D of the Service Appeal have no solid grounds to be taken. It is established law that in the disposal of Disciplinary Cases, it usually takes time from the start and its finality. So for the rest of contention/presumption of Appellant are irrelevant and not having worth Consideration.
- F- Incorrect, Appellant has been extended full opportunity of Personal hearing before reaching to its finality, hence the assumption for the rest of Phrases are baseless, irrelevant, having no legal bindings effect.
- G- Incorrect the defendant acted in accordance with Law and Rules.

In the wake of above submissions, the instant Service Appeal, is incompetent and without ~~merit~~ may graciously be dismissed with cost.


SECRETARY TO GOVT: OF
KP C&W Deptt: Peshawar
(Respondent-1)


EXECUTIVE ENGINEER
Building Division Mardan
(Respondent-3)


CHIEF ENGINEER (CENTRE)
C&W Department Peshawar
® (Respondent-2)


(MR. MUHAMMAD ISRAR)
Inquiry Officer the then
Executive Engineer
(Respondent-4)

Annex-I

OFFICE OF THE EXECUTIVE ENGINEER C&W DIVISION MARDAN

Dated Mardan the 28/3/2017.

No. 1739 /BE

To,

The Chief Engineer (Centre),
C&W Deptt: Peshawar.

Subject:- **POSTING /TRANSFER OF JUNIOR CLERK.**


Reference:- Your office order No.220-E/1717/CEC/C&WD Dated 15-3-2017.

With reference to your office Telephonic Message dated 27-3-2017, it is submitted that Mr. Aurang Zeb-V, Junior Clerk, since transferred from this Division is hereby relieved from duty from today the 28th March, 2017.



EXECUTIVE ENGINEER

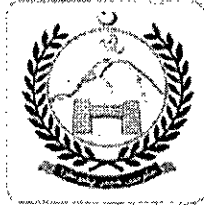
Copy forwarded to the :-

- 1- Chief Engineer (North) C&W Department Peshawar.
- 2- Superintending Engineer C&W Circle Mardan.
- 3- Sub Divisional Officer Building Sub Division No. IV Mardan.
- 4- Divisional Accounts Officer C&W Division Mardan.


EXECUTIVE ENGINEER

24/3/17





**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 2140 /ST

Dated: 26/10 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

The Chief Engineer (Centre), *CRW Deptt.*
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1153/2019, MR. AURANGZEB KASHMIRI.

I am directed to forward herewith a certified copy of Judgement dated 12.10.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR