## Form- A

# FORM OF ORDER SHEET

Court of	 	
Case No -	906/ <b>2022</b>	

	Case No	906/ <b>2022</b>
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/06/2022	The appeal of Mr. Zia-ur-Rehman presented today by Mr. Zartaj Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
2-	15.6.22	This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on 16-06-2022. Notices be issued to appellant
	<u> </u>	and his counsel for the date fixed.
		CHAIRMAN
	16 <sup>th</sup> June, 2022	Counsel for the appellant present.  Learned counsel for the appellant sought adjournment.  Last chance is given. To come up for preliminary hearing on 03.08.2022 before S.B.
		(Kalim Arshad Khan) Chairman

Learned counsel for the appellant submits that vide impugned order dated 17.01.2022, the appellant was removed from service against which he filed departmental appeal on 15.02.2022 which was not responded within the statutory period of ninety days compelling him to file this appeal in this Tribunal. This appeal is thus admitted to full hearing subject to all just and legal objections by the other side. Appellant is directed to deposit security fee. Out district respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days, while the local respondents be summoned through process serving agency of the learned Senior Civil Judge, Peshawar. To come up for written reply/comments on 27.09.2022 before S.B.

(Kalim Arshad Khan) Chairman

27.09.2022

Security & Process F

Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Assistant Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments before the S.B on 09.11.2022

(Mian Muhammad)

Member (E)

#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal NAC6 /2022

Zia ur Rehman S/O Sahib Din R/O Mohallah Hakeem Khel, Surizai Payan, Tehsil & District Peshawar, Chhowkidar, Ex-FATA Tribunal.

(Appellant)

#### **VERSUS**

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar & Others.

(Respondents)

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Appellant

Through

ZARTAJ ANWAR

Advocate High Court
Office FR, 3 Forth Floor
Bilour Plaza Peshawar

Cantt.

Cell: 0331-9399185

#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal	No.	/2022

Zia ur Rehman S/O Sahib Din R/O Mohallah Hakeem Khel, Surizai Payan, Tehsil & District Peshawar, Chhowkidar, Ex-FATA Tribunal.

(Appellant)

#### VERSUS

- 1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
- 2. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs department Civil Secretariat Peshawar.
- 3. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat Peshawar

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 17.01.2022 whereby the appellant has been awarded the major penalty of removal from service. and against which the departmental appeal dated 16.02.2022 was filed before the competent authority which is not yet responded even after the laps of statutory period of 90 days.

#### Prayer in Appeal: -

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 17.01.2022, MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

#### Respectfully Submitted:

1. That the appellant was initially appointed and serving the department in a capacity of Daily Wages, in the meanwhile various posts were advertised including the post of the appellant i.e. Chowkidar. (Copy of the advertisement is attached as annexure A).

- 3. That the competent authority/Departmental Selection Committee duly constituted for the purpose of recruitment considered the appellant for the post of Chowkidar and when found eligible for the post recommended for appointment along with other 23 candidates.
- 4. That the competent authority on the recommendation of selection committee issued the appointment orders of 23 candidates for the post of Chowkidar in which the appellant was also appointed. (Copy of the appointment order is attached as annexure B).
- 5. That the appellant takeover the charge of the post by submitting his arrival report along with medical fitness certificate and start performing his duties to the entire satisfactions of his superiors without any complaint whatsoever regarding his performance.
- 6. That while serving in the said capacity the appellant was served with a Show Cause Notice dated 25.10.2021, containing certain false and baseless allegations.

"That consequent upon the findings & recommendations of the inquiry committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all the 24 appointment orders were issued without authority and liable to be cancelled"

(Copy of the show cause is attached as annexure C)

- 7. That the appellant has submitted the reply to show cause within time and denied all the allegation leveled against the appellant. (Copy of the reply is attached as annexure D)
- 8. That astonishingly the appellant was awarded major penalty of "Removal from Service" vide office order dated 17.01.2022, without taking into consideration the reply of the show cause in which the appellant denied all the allegations leveled against the appellant. (Copy of the impugned order dated 17.01.2022 is attached as annexure E).
- 9. That the feeling aggrieved from the order dated 17.01.2022, the appellant filed a departmental appeal before the competent authority on 16.02.2022, which has not yet been responded by the respondents even after the laps of 90 days of statutory period. (Copy of the departmental appeal is attached as annexure F).

- 10. That the appointment of the appellant in pursuance of the advertisement made by the respondent department also in question the authority i.e. Registrar of the Ex-FATA Tribunal that he cannot make appointment or not competent for such appointments conducted in inquiry and issued the removal order of the Registrar namely Sajjad ur Rehman, being aggrieved from the allegation or in questioning the authority under which he appointed the present appellant along with others and also alleged irregularities while appointing them, approached to the this Honourable Tribunal in Appeal which was allowed and declared the Registrar namely sajjad ur Rehman is competent to made such appointments and ordered his reinstatement into service but with minor penalty for the irregularities if so committed (Copy of the appeal and judgment is attached as annexure G).
- 11. That being aggrieved from the illegal order dated 17.01.2022 the appellant has filed this appeal on the inter alia on following grounds

#### **GROUNDS OF SERVICE APPEAL**

- A. That the appellant has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.
- B. That no proper procedure has been followed before awarding the major penalty of Removal from service, the whole proceedings are thus nullity in the eyes of law.
- C. That the appointment of the appellant in pursuance of the advertisement made by the respondent department also in question the authority i.e. Registrar of the Ex-FATA Tribunal that he cannot make appointment or not competent for such appointments conducted in inquiry and issued the removal order of the Registrar namely Sajjad ur Rehman, being aggrieved from the allegation or in questioning the authority under which he appointed the present appellant along with others and also alleged irregularities while appointing them, approached to the this Honourable Tribunal in Appeal which was allowed and declared the Registrar namely sajjad ur Rehman is competent to made such appointments and ordered his reinstatement into service but with minor penalty for the irregularities if so committed

- D. That the appellant has not done any act or omission which can be termed as mis-conduct, thus the appellant cannot be punished for the irregularities if so occurred in the recruitment process.
- E. That no proper procedure has been followed before awarding the major penalty of Removal from service to the appellant. No charge sheet, no statement of allegation and without any proper inquiry, the appellant was awarded major penalty, thus the whole proceedings are defective in the eyes of law.
- F. That the appellant has not been given proper opportunity of personal hearing before awarding the penalty, hence the appellant have been condemned unheard.
- G. That the appellant was candidate along with other candidates who applied for the post in question but astonishingly with ulterior motive the appellant was in the alleged show cause made as member of the scrutiny committee.
- H. That the appellant was neither involved in corruption, nor embezzlement nor immoral turpitude. Therefore, such harsh and extreme penalty of Removal from service of appellant was not commensurate with the nature of his co-called misconduct to deprive his family from livelihood.
- I. That the competent authority has passed the impugned order against the law and proper procedure provided under the law was not followed by the respondents before awarding the major penalty of Removal from service.
- J. That the charges were denied by the appellant had never admitted, nor there sufficient evidence available to held the appellant guilty of the charges.
- K. That the superior courts have a number of reported judgments held that in case of awarding major penalty of Removal from service regular procedure of holding inquiry cannot be dispensed with that too when the charges are denied by the employee.
- L. That the appellant has never committed any act or omission which could be termed as misconduct the charges leveled against the appellant are false and baseless besides the same are neither probed nor proved albeit the appellant has illegally been removed from service.

- 5
- M. That the appellant at his credit a long unblemished and spotless service career, the penalty imposed upon the appellant is too harsh and is liable to be set aside.
- N. That the appellant is jobless since his Removal from service.
- O. That the appellant also seeks permission of this honorable Tribunal to rely on additional grounds at the time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 17.01.2022, may please be set aside and the appellant may kindly be reinstated into service with all back benefits.

Appellant

Through

ZARTAJ ANWAR

Advocate Peshawar

IMRAN KHAN

Advocate Peshawar

#### **CERTIFICATE:**

It is certified that no such like Service Appeal has earlier been filed before this Hon'ble Tribunal in the subject matter.

**DEPONENT** 

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.\_\_\_\_/2022

Zia ur Rehman S/O Sahib Din R/O Mohallah Hakeem Khel, Surizai Payan, Tehsil & District Peshawar, Chhowkidar, Ex-FATA Tribunal.

(Appellant)

DEPONENT

#### **VERSUS**

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar & Others.

(Respondents)

#### AFFIDAVIT.

I, Zia ur Rehman S/O Sahib Din R/O Mohallah Hakeem Khel, Surizai Payan, Tehsil & District Peshawar, Chhowkidar, Ex-FATA Tribunal, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Fraggets A

Applications are invited from highly motivated candidates having lomicile of Khyber Pakhtunkhwa and newly merged areas again: ne following vacant posts on regular basis.

.No	Name of Post	BPS	No's of Post	Age	Qualification
1 .	Assistant Moharar/	14	04	18-32	BA/BSc/B.Com & Equivalent w 06 years experience.
2	Key Punch Operator	12	03	18-32	BA/BSc/B.Com & Equivalent
3	Stenographer	12	01	18-32	Speed up to 40 WPM
4	Junior Clerk	07	04	18-32	FA/FSc or Equivalent with Typing Speed up to 40 WPM
5	Driver	04	04	18-40	Middle pass having "LTV" Driving License
6	Naib Qasid	01	04	18-40	Middle Pass
$\frac{3}{7}$	Chowkidar	01	03	18-40	

erm & Conditions:-

Age relaxation in deserving cases can be considered as per Government rules. 2 Only thortlisted candidates will be called for test/interview. 3. No TA/DA will be admissible for est/interview. 4. Application form along with attested copies of Testimonials, Experience cest/interview. 4. Application form alongwith attested copies of resumoniais, Experience certificates, CNIC, Domicile Certificate and a recent photograph should reach on PO Box Certificates, CNIC, Domicile Certificate and a recent photograph should reach on PO Box No. 131 within 15 days of advertisement. 5. Incomplete or applications received after no. 131 within 15 days of advertisement. 5. Incomplete or applications received after should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained on a confidence of the complete or applications received after not proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained on a confidence of the complete or applications received after not proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through proper closing date will not be entertained. 6. Government employee should apply through the close close close close clo

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# OFFICE OF THE REGISTRAR FATA TRIBUNAL, PESHAWAR

#### **ORDER**

No. R/11/2018-19/ //C S dated: 08.03.2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint Mr. Zia Ur Rahman S/o Sahib Din against the vacant post of Chowkidar BPS-01 (9130-290-17830) in FATA Tribunal at Peshawar under rule 10 sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

#### Terms & conditions;

- 1. He will get pay at the minimum of BPS-01 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
- 2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt: to his account in the said fund, in prescribed manner.
- 3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
- 4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
- 5. He has to join duties at his own expenses.
- If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

#### Copy to:

- 01. The Accountant General Pakistan Revenues Sub Office, Peshawar.
- 02. Ps to ACS FATA, Peshawar.
- 03. PS to Secretary Law & Order FATA, Peshawar.
- 04. PS to Secretary Finance FATA, Peshawar.
- 05. Personal File.
- 06. Official Concerned.

REGISTRAR FATA TRIBUNAL



## GOVERNMENT OF KHYBER PAKHTUNKHWA HOME & TRIBAL AFFAIRS DEPARTMENT KHYBER ROAD PESHAWAR

HD/B&A/FATA Tribunal/55/2021/ 20-2

MONEDO: C

Dated: 25-10-2021

To:

Mr. Zia Ur Rehman Chowkidar (BPS-03), Ex-FATA Tribunal.

Subject:

SHOW CAUSE NOTICE.

I am directed to refer to the subject noted above and to enclose herewith Show Cause Notice (in original) duly signed by the Competent Authority for your compliance within stipulated time period and further necessary action

Section Officer (B & A)

#### Encl: As above

#### Copy to:

- 1. PS to Secretary Home & TAs Department Khyber Pakhtunkhwa.
- 2. PS to Special Secretary Home & TAs Department Khyber Pakhtunkhwa.
- 3. PS to Additional Secretary (L & O) Home & TAs Department NMAs.
- 4. PA to Deputy Secretary (L & O) Home & TAs Department NMAs.
- 5. Section Officer (E-II) Government of Khyber Pakhtunkhwa Establishment Department with reference to his letter No. SOE-II(ED)2(9)2010 dated: 13.09.2021.

Section Officer (B & A)

#### **SHOW CAUSE NOTICE**



I Mr. Ikram Ullah Khan Secretary Home & Tribal Affairs Department as Competent Authority, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve upon you, Mr. Zia Ur Rehman, Chowkidar employees of Ex-FATA Tribunal as follows:-

"That Consequent upon the findings & recommendations of the Inquiry Committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful Authority and liable to be cancelled".

I am, therefore, satisfied that you have been found guilty of "Misconduct" as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule (I) (vi) "appointed in violation of law and rules".

- 2. To, dispense with the Inquiry and serve you with a show cause notice under Rule-7 of the ibid Rules.
- 3. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the following penalty under the Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011:-

i. Removal from service

- 4. you are therefore 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.
- 5. If no reply to this notice is received within seven days or not more than of fifteen days of this delivery, it shall be presumed that you have no defense to put in, and in that case ex-parte action shall be taken against you.

(IKRAM ULLAH KHAN) HOME SECRETARY (Competent Authority)

Mr. Zia Ur Rehman, Chowkidar Ex-FATA Tribunal

Animex: D

To,

Home Secretary, Khyber Pakhtunkhwa, Peshawar,

Subject: Reply to the show cause notice dated 25.10.2021.

Respected Sir,

I very humbly submit the following few lines for your kind and sympathetic consideration:

- 1. That 23 posts including the post of the undersigned i.e. Chowkidar were advertised in daily AJJ and Aeen newspaper dated 09.02.2019 for open competition, being fit and eligible in all respect the undersigned applied for the post of Chowkidar.
- 2. That after gone all the rigors and selection process i.e interview, the undersigned was duly recommended for the post of Chowkidar and was appointed on the said post vide office order dated 08.03.2019.
- 3. That since my appointment I performed my duties with great zeal and devotion to the entire satisfaction of my superiors without any complaint whatsoever regarding my performance.
- 4. That while serving in the said capacity, the undersigned received a show Cause Notice dated 25.10.2021 by leveling false and baseless allegation which was never committed by the undersigned by any malafide intention nor any connection or relation with authority issued my appointment order and even have no relation with the recruitment process, the allegations are the following

"That consequent upon the findings & recommendations of the inquiry committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful authority and liable to be cancelled'

I am therefore satisfied that you have been found guilty of "Misconduct" as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

- 5. That proper procedure was adopted in the process of recruitment i.e. advertisement, test and interview and the undersigned was appointed on the post after gone all the rigors and selection process provided under the law.
  - 6. That the allegation so leveled against me regarding the misconduct is false and baseless in have never committed any act or omission which could be term as misconduct and the allegations leveled against me does not come in the orbit of misconduct.
  - 7. That there is nothing on the part of undersigned which term as misconduct as undersigned applied for the advertised post while having all the request eligibility criteria and also compete along with all other candidates who applied for the post and when found fit and eligible for the post declare recommended for the post of Chowkidar
- 8. That the members of Tribunal attended the test and interview on the said date and all the committee members were agreed principally on the selection and recommendation of the selection committee and on such principle on the same date issued the appointment orders and the copy of the recommendation of selection committee was handed over to section officer and further process, and on the same issued when the inquiry officer called upon the selected candidates they given on Oath the statement that they duly appeared before the selection committee.
- 9. That the so-called inquiry committee called upon all the selected candidate and given Oath regarding the favoritism an nepotism if so made in favor of any of the candidate which they duly replied on oath that no such act of favoritism and nepotism were exist in the present selection process, furthermore none of the member of the selection committee were duly inquired in the matter as all the process was taken place in their presence nor any sort of evidence was taken on record which can proof any of the allegation.

- 10. That the inquiry committee did not associate me with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine any of the evidence which show my involvement in any malafide action or my eligibility for the post in question.
- 11. That the undersigned was not even served with a charge sheet and statement of allegation, neither any fact finding nor regular inquiry was conducting which can show any sort of involvement of the undersigned in the requirement process, which is mandatory provision under the law.
- 12. That the undersigned is a responsible, cautious citizen and cannot even think of the display of the charges leveled against me.
- 13. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine those who may have deposed anything against me during the inquiry.
- 14. That the undersigned has never committed any act or omission which could be termed as misconduct, I duly performed my duties as assigned with full devotion, zeal and loyalty albeit I have been roped in the instant false and baseless charges.
- 15. That the charges leveled against me were neither proved during the inquiry proceedings, nor any independent and convincing proof/evidence has been brought against me in the inquiry that could even remotely associate me with the charges, as such the charges remained unproved during the inquiry and the inquiry officer has thus rendered his findings on mere surmises and conjunctures regarding charges, further to add that the so called inquiry was conducted in sajjad ur Rehman registrar case.
- 16. That the undersigned has at his credit an unblemished and spotless service career, during entire service career, I have never given any chance of complaint whatsoever regarding my performance. I always preferred the interests of the department over and above my personal interests. The proposed penalty if imposed upon me, it would be too harsh and would stigmatized the bright and spotless service record of the undersigned.



# tained. E GOVERNMENT OF KHYBER PAKHTUNKHWA HOME & TRIBAL AFFAIRS DEPARTMENT KHYBER ROAD PESHAWAR

Dated Peshawar 17th January, 2022

#### **ORDER**

HD/FATA Tribunal/B&A/55/2022/338-47 WHEREAS, Mr. Zia Ur Rehman, Chokidar (BPS-03) of Ex-FATA Tribunal was proceeded against under the Rule-4 of Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011, for the charges mentioned in the statement of show cause notice served upon him. 2.

- AND WHEREAS, the Department gave opportunity of personal hearing to Mr. Zia Ur Rehman, Chokidar (BPS-03), Ex-FATA Tribunal as required under the rules 7(d) of Government Servant (Efficiency & Disciplinary) Rules, 2011, AND WHEREAS, Mr. Zia Ur Rehman, Chokidar (BPS-03), Ex-FATA Tribunal was not able to produce any favorable record.
- NOW, THEREFORE, the Competent Authority has been pleased to impose major penalty of "Removal from Service" on Mr. Zia Ur Rehman, Chokidar (BPS-03), Ex- FATA Tribunal under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, with effect from

Secretary to Govt. Khyber Pakhtunkhwa Home & Tribal Affairs Department

# Endst No & Date even

Copy for information forwarded to:

- 1. The Accountant General Govt. of Khyber Pakhtunkhwa. 2.
- Secretary to Govt. of Khyber Pakhtunkhwa Home & Tribal Affairs Department. 3.
- Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department. 4.
- Secretary to Govt. of Khyber Pakhtunkhwa Finance Department. 5.
- Special Secretary-II Home & Tribal Affairs Department Khyber Pakhtunkhwa. 6.
- Additional Secretary (Judicial) Home & TAs Deptt: Khyber Pakhtunkhwa. 7.
- PSO to Chief Secretary Khyber Pakhtunkhwa. 8.
- PS to Chief Minister Khyber Pakhtunkhwa. 9.
- Account Section Home & TAs Department (NMAs). Official concerned.

∠10.

Section Officer

The Chief Secretary,

Khyber Pakhtunkhwa, Peshawar.

Govt. of

CHIEF SECRETARY
Govt: of Knyber Pakhtunkhwa
Peshawar

Aning F

Subject:

DEPARTMENTAL APPEAL, AGAINST THE ORDER DATED 17.01.2022, WHEREBY THE UNDERSIGNED HAS BEEN AWARDED THE MAJOR PENALTY OF REMOVAL FROM SERVICE.

Prayer in departmental appeal:

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 17.01.2022, MAY PLEASE BE SET ASIDE AND THE UNDERSIGNED MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

Respected Sir,

The undersigned very humbly submits the following few lines for your kind and sympathetic consideration:

- 1. That 23 posts including the post of the undersigned i.e. Chowkidar were advertised in daily AJJ and Aeen newspaper dated 09.02.2019 for open competition, being fit and eligible in all respect the undersigned applied for the post of Chowkidar.
- 2. That after gone all the rigors and selection process i.e interview, the undersigned was duly recommended for the post of Chowkidar and was appointed on the said post vide office order dated 08.03.2019.
- 3. That since my appointment I performed my duties with great zeal and devotion to the entire satisfaction of my superiors without any complaint whatsoever regarding my performance.
- 4. That while serving in the said capacity, the undersigned received a show Cause Notice dated 25.10.2021 by leveling

false and baseless allegation which was never committed by the undersigned by any malafide intention nor any connection or relation with authority issued my appointment order and even have no relation with the recruitment process, the allegations are the following

"That consequent upon the findings & recommendations of the inquiry committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful authority and liable to be cancelled'

I am therefore satisfied that you have been found guilty of "Misconduct" as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

- 5. That the undersigned duly submitted reply to the show cause by denying all the false and baseless allegation leveled against the undersigned.
- 6. That proper procedure was adopted in the process of recruitment i.e. advertisement, test and interview and the undersigned was appointed on the post after gone all the rigors and selection process provided under the law.
- 7. That the allegation so leveled against me regarding the misconduct is false and baseless and have never committed any act or omission which could be term as misconduct and the allegations leveled against me does not come in the orbit of misconduct.
- 8. That there is nothing on the part of undersigned which term as misconduct as undersigned applied for the advertised post while having all the request eligibility criteria and also compete along with all other candidates who applied for the post and when found fit and eligible for the post declare recommended for the post of Chowkidar.
- 9. That the members of Tribunal attended the test and interview on the said date and all the committee members were agreed principally on the selection and recommendation of the selection committee and on such principle on the same date issued the appointment orders

and the copy of the recommendation of selection committee was handed over to section officer and further process, and on the same issued when the inquiry officer called upon the selected candidates they given on Oath the statement that they duly appeared before the selection committee.

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- 10. That the so-called inquiry committee called upon all the selected candidate and given Oath regarding the favoritism an nepotism if so made in favor of any of the candidate which they duly replied on oath that no such act of favoritism and nepotism were exist in the present selection process, furthermore none of the member of the selection committee were duly inquired in the matter as all the process was taken place in their presence nor any sort of evidence was taken on record which can proof any of the allegation.
- 11. That the inquiry committee did not associate me with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine any of the evidence which show my involvement in any malafide action or my eligibility for the post in question.
- 12. That the undersigned was not even served with a charge sheet and statement of allegation, neither any fact finding nor regular inquiry was conducting which can show any sort of involvement of the undersigned in the requirement process, which is mandatory provision under the law.
- 13. That the undersigned is a responsible, cautious citizen and cannot even think of the display of the charges leveled against me.
- 14. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine those who may have deposed anything against me during the inquiry.
- 15. That the undersigned has never committed any act or omission which could be termed as misconduct, I duly performed my duties as assigned with full devotion, zeal

and loyalty albeit I have been roped in the instant false and baseless charges.

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- 16. That the charges leveled against me were neither proved during the inquiry proceedings, nor any independent and convincing proof/ evidence has been brought against me in the inquiry that could even remotely associate me with the charges, as such the charges remained unproved during the inquiry and the inquiry officer has thus rendered his findings on mere surmises and conjunctures regarding charges, further to add that the so called inquiry was conducted in sajjad ur Rehman registrar case.
- 17. That it is pertinent to mentioned here that one Sajjad ur Rehman who was also removed from his service with the allegation that he has no authority/power of appointment, against which he filed service appeal before the honourable Service Tribunal Khyber Pakhtunkhwa Peshawar, which was allowed in favor of sajjad ur Rehman.
- 18. That the undersigned has at his credit an unblemished and spotless service career, during entire service career, I have never given any chance of complaint whatsoever regarding my performance. I always preferred the interests of the department over and above my personal interests. The penalty of Removal from Service imposed upon me, is too harsh and stigmatized the bright and spotless service record of the undersigned.
- 19. That the penalty so imposed upon the undersign is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

### **GROUNDS OF DEPARTMENTAL APPEAL**

- A. That the undersigned has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.
- B. That no proper procedure has been followed before awarding the major penalty of Removal from service,

the whole proceedings are thus nullity in the eyes of law.



- C. That it is pertinent to mentioned here that one Sajjad ur Rehman who was also removed from his service with the allegation that he has no authority/Power of appointment, against which he filed service appeal before the honourable Service Tribunal Khyber Pakhtunkhwa Peshawar, which was allowed in favor of sajjad ur Rehman and he was reinstated into service.
- D. That the undersign has not done any act or omission which can be turned as mis-conduct, thus the undersign cannot be punished for the irregularities if so occurred in the recruitment process.
- E. That the undersign has not been given proper opportunity of personal hearing before awarding the penalty, hence the undersign have been condemned unheard.
- F. That the charges were denied by the undersigned had never admitted, nor there was sufficient evidence available to held the undersigned guilty of the charges.
- G. That the superior courts have in a number of reported judgments held that in case of awarding major penalty of Removal from service regular procedure of holding inquiry cannot be dispensed with that too when the charges are denied by the employee.
- H. That the undersign has never committed any act or omission which could be termed as misconduct the charges leveled against the undersign are false and baseless besides the same are neither probed nor proved albeit the undersign has illegally been removed from service.
- I. That the undersign at his credit unblemished and spotless service career, the penalty imposed upon the undersign is too harsh and is liable to be set aside.

J. That the reply of show cause submitted may also be consider as integral part of the undersign departmental appeal as each and every alleged allegation was rebutted in detail as to probe the matter in question.

K. That the undersign is jobless since his Removal from service.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 17.01.2022, May please be set aside and the undersigned may kindly be reinstated into service with all back benefits.

Yours Obediently,

Zia Ur Rehman Chowkidar (BPS-03) **Ex-FATA** Tribunal Peshawar. 15-2-2022

HACMEX (

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.\_\_\_\_/2021

Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No 973, Street No 28, Sector E-5, Phase 7 Hayatabad Peshawar.

(Appellant)

#### **VERSUS**

- 1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
- 2. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs department Civil Secretariat Peshawar.
- 3. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat Peshawar

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 10.09.2020 whereby the appellant has been awarded the major penalty of removal from service. and against which the departmental appeal dated 25.09.2020 was filed before the competent authority which is still not responded after laps of statutory period on 90 days.

Re-submitted Prayer in Appeal: and third.

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 10.09.2020, MAY FLEASE BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

TESTED



#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2770/2021

Date of Institution ..

22.11.2021

Date of Decision

01.02.2022



Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No. 973, Street No. 28, Sector E-5, Phase 7 Hayatabad Peshawar.

(Appellant)

#### **VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others. ... (Respondents)

Zartaj Anwar, Advocate

For Appellant

Noor Zaman Khattak, District Attorney

For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

CHAIRMAN

**MEMBER (EXECUTIVE)** 

JUDGMENT

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

Brief facts of the

case are that the appellant, while serving as Registrar in Ex-FATA Tribunal, was proceeded against on the charges of misconduct and was ultimately dismissed from service vide order dated 10-09-2020. Feeling aggrieved, the appellant filed departmental appeal dated 25-09-2020, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 10-09-2020 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 appellant has not been treated in accordance with law, hence his rights secured under the

EXAMINER Knyber Pakhrukhwe Service Tribung

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Constitution has badly been violated; that no proper procedure has been followed before awarding the major penalty of dismissal from service, the whole proceedings are thus nullity in the eye of law; that the appellant has not done any act or omission which can be termed as misconduct, thus the appellant cannot be punished for the irregularities, if so occurred in the recruitment process; that the allegation so leveled against the appellant regarding the non-production of recruitment record is baseless; that no proper inquiry has been conducted against the appellant, hence the appellant was deprived of the opportunity to defend his cause; that neither statement of any witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that the appellant has not been served with any showcause notice, thus the whole proceedings are defective in the eye of law; that the inquiry committee was under statutory obligation to highlight such evidence in the inquiry report on the basis of which the appellant was found guilty of allegations, moreover, there was not a single evidence to connect the appellant with the commission of allegation of misconduct; that mere verbal assertion without any cogent and reliable evidence is not sufficient to justify the stance of the department in respect of the so called allegations leveled against the appellant in the charge sheet/statement of allegation, hence the impugned order passed by the competent authority on the basis of such inquiry is against the spirit of law; that the competent authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case, but he failed to do so and awarded major punishment of dismissal from service upon the appellant despite the fact that the allegations as contained in the charge sheet/statement of allegation has not been proved in the so called inquiry; that the appellant is neither involved in corruption nor embezzlement nor moral turpitude, therefore such harsh and extreme penalty of dismissal from service of the appellant does not commensurate with the nature of the guilt to deprive his family from livelihood;

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that the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice, therefore the impugned order is not tenable under the law; that the appellant has not been afforded proper opportunity of personal hearing and was condemned unheard.

- O3. Learned District Attorney for the respondents has contended that the appellant while serving as registrar in Ex-FATA Tribunal, has been proceeded against on account of advertizing 23 posts without approval of the competent authority and appointed 24 candidates against these posts without recommendation of the departmental selection committee; that a proper inquiry was conducted and during the course of inquiry, all the allegations leveled against the appellant stood proved, consequently, after fulfillment of all the codal formalities and affording chance of personal hearing to the appellant, the penalty of removal from service was imposed upon the appellant vide order dated 10-09-2020; that proper charge sheet/statement of allegation was served upon the appellant as well as proper showcause notice was also served upon the appellant, but inspite of availing all such chances, the appellant failed to prove his innocence.
- 04. We have heard learned counsel for the parties and have perused the record.
- O5. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUTS AND AUDIT RULES, 2015, where appointing authority for making appointments in Ex-FATA

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Tribunal from BPS-1 to 14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

On the other hand, the inquiry report placed on record would suggest that 06. before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointing authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any clocumentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval of the competent authority has vanished away and it can be safely inferred that neither ACS FATA nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal. We have repeatedly asked the respondents to produce any such order/notification, which could show that appointing authority in respect of filling in post in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointing authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in voque in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegations does not hold ground.

07. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed

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by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

We have observed that charge against the appellant was not so grave as 08. to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. As a sequel to the above, the instant appeal is partially accepted. The appellant is re-instated into service and the impugned order is set aside to the extent that major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

**ANNOUNCED** 01.02.2022

CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)

MEMBER (E)

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# CERTIFICATE OF DOMICILE

The Pakistan Citizenship Act, 1951 (Act, II of 1951) Rules made thorounder (vido Rule No. 23)

1 Zia - Uz - Rehman Son/Daughter/Wife of Sahib - Din
Declare that I was born of parents who are permanently domiciled in Knyber
Pakhtunkhwa, Province having belonged to it by birth/settled in it.
I belong to Village / Mohallah Hokeom Khail Susizai Dayo
Tehsil Peshawas District Peshaway
Signature/Thumb Impression of Applicant  Name in Block Letter Zia - UR - REHMAN
Dated 05/08/20/9
Pursuance to the declaration dated 05-08-2019 filled by
Mr./Mrs./Miss Z10-LJR-Rehman S/o, D/o, W/o Salab-din
CNIC No 17301-5487506-7 domiciled in the Khyber Pakhtunkhwa
Province. It is hereby certified that the said
is born of Parents who are permanent residents of Khyber Pakhtunkhwa Province
having belonged to it by birth / settled in it. I have satisfied myself.personally / through
my relevant sources that the above declaration is true and duly certified overleaf.
This
COUNTER SIGNED BY
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PROVIDED always, that I/we undertake at time of calling of Court/my authorized agent shall inform the Advocate and make him appearance may be dismissed in default, if it be proceeded ex-parte the said counted responsible for the same. All costs awarded in favour shall be the right in his nominee, and if awarded against shall be payable by me/us	r in Court, if the
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Jm-Clen. IMRAN KHAN Advocate High Court

ZARTAJ ANWAR

Advocate High Courts

Advocate High Courts

Advocates, Legal advisors, Service & Labour Law Consultant FR-3, Fourth Floor, Bilbur Plaza, Saddar Road, Peshawar Cantt Mobile-0331-9399185

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# KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

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# KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD,

PESHAWAR.

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