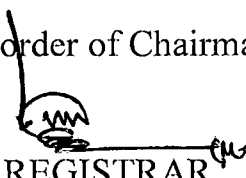


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1570/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/11/2022	<p>The appeal of Mr. Abdul Munir Khan presented today by Mr. Fazal Shah Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No 1570/2022

Abdul Munir Kha.....Appellant

V E R S U S

Govt. & others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service Appeal with affidavit		1-5
2.	Application for condonation of delay with Affidavit		6
3.	Copy of Order dated 04-03-2003	A	7
4.	Copies of Judgments dated 25-07-2007 & appeal dated 01-08-2007	B & C	8-29
5.	Copy of departmental appeal dated 17-03-2009 & Judgment dated 13-10-2009	D & E	30-37
6.	Copy of CPLA & Order dated 11-03-2010 is enclosed as Annexure F).	F	38-44
7.	Copy of Judgment dated 09-09-2015 & Order dated 26-01-2017	G	45-71
8.	Copy of departmental appeal, Service Appeal & Judgment dated 24-12-2018	H & I	72-80
9.	Copy of Order dated 28-03-2022 in CPLA No 673/2019	J	81-86
10.	Copy of departmental appeal, application dated 20-10-2022 & Letter/Order dated 17-08-2022	K, L & M	87-91
11.	Copy of Judgment dated 22-05-2008 in Service Appeal No 1113/2007	N	92-99
12.	(Copy of Order dated 11-12-1999 & Letter/Order dated 23-09-2004	O	100-102
13.	Vakalat Nama		103

Dated:-04-11-2022

Appellant

Through



Fazal Shah Mohmand

Advocate,

Supreme Court of Pakistan

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841

Email:- fazalshahmohmand@gmail.com

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 1570/2022

Abdul Munir Khan, Ex Extra Assistant Commissioner, Peshawar.

.....Appellant

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Department, Civil Secretariat Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER/DECISION COMMUNICATED TO THE APPELLANT VIDE LETTER DATED 17-08-2022 (RECEIVED BY THE APPELLANT ON 21-10-2022) WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 04-03-2003 HAS BEEN FILED

PRAYER:-

On acceptance of this appeal the impugned Order/decision conveyed to the appellant vide letter dated 17-08-2022 and order dated 04-03-2003, may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant being qualified was initially appointed as Inspector Income Tax under the Federal Govt. in the year 1980 and later on, upon the recommendations of Khyber Pakhtunkhwa Public Service Commission was appointed as Tehsildar in the year 1982. With the passage of time, the appellant was promoted and appointed as an officer in regular PCS (Executive Group) BPS-17 on 25-11-1992 and since enlistment, the appellant performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.
2. That the appellant was deputed to National Highways Authority as Land Acquisition Collector on 15-04-1998 and in the year 2002 landed in enmity causing imminent danger to his life, coupled with the fake warrant of arrest of NAB authorities which fact has also been referred by the Apex Court in its order dated 11-03-2010, which forced the appellant to move away along with his family. In the mean while departmental proceedings under KP Removal from Service (Special Powers) Ordinance, 2000 and KP E & D Rules 1973 were initiated against the appellant resulting in his Removal from Service Vide Order dated 04-03-2003. **(Copy of Order dated 04-03-2003 is enclosed as Annexure A).**

3. That on 17-04-2006, the appellant surrendered before the NAB authorities and after conclusion of trial, the appellant was convicted by the Accountability Court and sentenced to 4 years R. I. and fine of RS. 8,25,00,000/- or in default to suffer S. I. for two years vide Judgment in Reference No 8/2007 dated 25-07-2007, and was acquitted in other two references. The appellant filed appeal against the Judgment dated 25-07-2007 on 01-08-2007 before the honorable Peshawar High Court Peshawar. **(Copies of Judgments dated 25-07-2007 & appeal dated 01-08-2007 is enclosed as Annexure B & C).**
4. That after the enmity was patched up through the elders, the appellant preferred departmental appeal on 17-03-2009 which was rejected on 07-04-2009, where against the appellant on 04-05-2009 filed Service Appeal No 729/2009 before this honorable Tribunal but the same was dismissed on 13-10-2009, as the conviction of the appellant was in field. **(Copy of departmental appeal dated 17-03-2009 & Judgment dated 13-10-2009 is enclosed as Annexure D & E).**
5. That against the Judgment of this honorable Tribunal dated 13-10-2009, the appellant filed CPLA before the honorable Supreme Court which was dismissed for the reason that the conviction of the appellant was in field by that time vide order dated 11-03-2010. **(Copy of CPLA & Order dated 11-03-2010 is enclosed as Annexure F).**
6. That in the meanwhile the appeal filed against conviction by the appellant in the Peshawar High Court, Peshawar was accepted by acquitting the appellant and setting aside the conviction vide Judgment dated 09-09-2015 and even CPLA filed was also dismissed vide Order dated 26-01-2017. **(Copy of Judgment dated 09-09-2015 & Order dated 26-01-2017 is enclosed as Annexure G).**
7. That after acquittal, the appellant again filed departmental appeal but was again rejected on 30-12-2015, where against the appellant again filed Service Appeal No 1436/2015 before this honorable Tribunal but the same was also dismissed vide Judgment Dated 24-12-2018, **totally ignoring the acquittal** and other circumstances involved in the case. **(Copy of departmental appeal, Service Appeal & Judgment dated 24-12-2018 is enclosed as Annexure G, H & I).**
8. That the appellant again approached the Apex Court by filing CPLA No 673/2019, which was withdrawn with permission to seek remedy before Provincial Govt. vide Order dated 28-03-2022. **(Copy of Order dated 28-03-2022 in CPLA No 673/2019 is enclosed as Annexure J).**
9. That the appellant again preferred departmental appeal vide diary No 674 dated 16-06-2022 for his reinstatement in service which was filed, **sane keeping in view the permission granted by the Apex Court,** any legal however copy was not provided to the appellant and the appellant was constrained to file application on 20-10-2022 for providing him copy of rejection order and finally

copy of rejection order was provided to the appellant after application on 21-10-2022. **(Copy of departmental appeal, application dated 20-10-2022 & Letter/Order dated 17-08-2022 is enclosed as Annexure K, L & M).**

10. That the impugned Order/decision conveyed to the appellant vide letter dated 17-08-2022 and order dated 04-03-2003 are against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUNDS:-

- A. That the impugned Orders are illegal, unlawful, without lawful authority and void ab-initio.
- B. That mandatory provisions of law and rules have been badly violated by the respondents and the appellant has not been treated according to law and rules in violation of Article 4 and 25 of the Constitution.
- C. That the impugned orders are in total disregard of the law on the subject and as such void ab-initio.
- D. That ex-parte action has been taken against the appellant and has been condemned unheard.
- E. That the appellant was proceeded against, under double enactment of RSO 2000 & KP Civil Servants (E & D) Rules 1973 which renders the impugned order void against which no limitation runs.
- F. That due to enmity coupled with fake warrant of arrest of NAB authorities the appellant with his family members exiled from the scene which was culminated into his removal by way not known to law.
- G. That Section 3 (a) the RSO 2000 provides departmental proceedings on habitually absenting only thus the impugned orders are void being not mandated by law.
- H. That even otherwise no notice as per required in case of absence was sent on home address of the appellant hence too the impugned orders are liable to be set at naught.
- I. That this honorable Tribunal has accepted the like appeals including Service Appeal No 1113/2007 titled as Syed Gul Jamal VS Govt vide Judgment dated 22-05-2008 holding that removal is not proportionate to the guilt of absence. **(Copy of Judgment dated 22-05-2008 in Service Appeal No 1113/2007 is enclosed as Annexure N).**
- J. That one Sher Hassan, Assistant involved in murder case was removed on the allegations of absence of more than seven years vide order dated 11-12-1999 and was reinstated by the department on 23-09-2004 with all benefits condoning the

delay even, while the petitioner is treated differently. (Copy of Order dated 11-12-1999 & Letter/Order dated 23-09-2004 is enclosed as Annexure O).

- K. That the charge of corruption was never substantiated, being acquitted from such charges by the Court of competent jurisdiction.
- L. That filing of appeal before this honorable Tribunal prior to acquittal was futile exercise having no value in the eyes of law besides giving fresh cause of action to the appellant.
- M. That the allegations leveled against the appellant were never substantiated as no one was examined in its support, thus the appellant has been punished for no fault on his part.
- N. That as per the recent pronouncement of the Apex Court in case of adverse order, the other party is required to be heard as enunciated under the principles of natural justice.
- O. That the alleged absence was not willful and deliberate rather was due to circumstances compelling in nature and awarding major penalty on the allegations of alleged absence is very harsh.
- P. That no charge sheet and show cause notice were communicated to the appellant.
- Q. That the appellant was not afforded the opportunity of personal hearing in violation of Article 10 of the Constitution.
- R. That since illegal Removal from service, the appellant is jobless.
- S. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.

Dated:-04-11-2022

Appellant

Through



**Fazal Shah Mohmand
Advocate**

Supreme Court of Pakistan

5

LIST OF BOOKS

1. Constitution 1973.
2. other books as per need

CERTIFICATE:

Certified that as per instructions of my client, no other Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Tribunal.


ADVOCATE

AFFIDAVIT

I, Abdul Munir Khan, Ex Extra Assistant Commissioner, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No _____/2022

Abdul Munir Kha.....Appellant

V E R S U S

Govt. & others.....Respondents

Application for condonation of delay if any

Respectfully Submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application besides the applicant pursued his grievances before the Courts/tribunal constituted for the purpose consistently.
3. That since the impugned order is void ab-initio being passed in utter violation of law and rules on the subject and even the impugned order was not communicated to the appellant in time rather the appellant obtained copy of the same after he submitted application for the same on 21-10-2022 through his own efforts and as such the instant appeal is as such well within time furthermore lis are to be decided on merit instead of technicalities.
4. That no evidence of any sort has been collected in support of the allegations besides departmental appeals of the appellant are still pending before respondent No 1.
5. That law as well as the dictums of the superior Courts also favors decisions of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-04-11-2022

Through

Appellant



**Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan**

AFFIDAVIT

I, Abdul Munir Khan, Ex Extra Assistant Commissioner, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Application**, are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

A
Annex
"A"
⑦

**GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT**

Dated Peshawar the, 04.3.2003.

ORDER:

NO: SOE-II(ED)2(381)/92: Whereas Mr. Abdul Munir Khan, PCS (EG) BS-17 absented himself from duty with effect from 17.1.2002 without leave when he was serving on deputation as LAC in the office of Director (LM&IS) National Highway Authority Bara Banda Risalpur.

AND WHEREAS a notice was issued to him on his home address through DCO D.I.Khan vide letter No: SOE-II(ED)2(381)/92 dated 11.9.2002 directing him to resume duty within 15 days of receipt of notice and intimate cause of his absence or apply for leave according to rules.

AND WHEREAS since the officer did not report for duty within the stipulated period, the notice was published in Daily "AAJ" and "STATESMAN" on 15.12.2002 directing him to resume duty within 15 days of publication of the notice and intimate the cause of his absence falling which ex-parte decision would be taken against him under the relevant law, rules.

AND WHEREAS the stipulated period expired on 30.12.2002 and the officer did not resume duty.

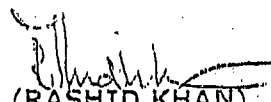
NOW THEREFORE, the Competent Authority under the NWFP Removal from Service (Special Powers) Ordinance, 2000 read with Rule 8-A of the Efficiency & Discipline Rules 1973 has been pleased to order the "Removal From Service" of Mr. Abdul Munir Khan, PCS(EG) BS-17 the then LAC in the office of Director (LM&IS) NHA, Bara Banda, Risalpur, with effect from 17.1.2002.

**SECRETARY
ESTABLISHMENT**

ENDST: NO: AND DATE OF EVEN.

Copy forwarded to :-

1. Accountant General NWFP, Peshawar.
2. Director (LM&IS) NHA, Bara Banda, Risalpur.
3. Mr. Abdul Munir the then LAC, NHA House No.371, Street No.22. Sector 2-E,Phase-5. Hayatabad, Peshawar.
4. SO(Secret)/(Estt-I)/(Admn)/EO, E&A Department.
5. PS to Chief Secretary, NWFP.
6. PS to Secretary Establishment.
7. PA to AS(E)/DS(E) Estab: Deptt:
8. Bill Assistant, EA&D.
9. Office order file.
10. Personal file of the officer.


(RASHID KHAN)
Section Officer (E-II)

ACCOUNTABILITY COURT NO II, NWFP,
PESHAWAR

③
Annex
"B"

Reference No. 8/2007

State.....Vs.....Abdul Munir Khan S/o Jehangir
Khan,

(LAC Motor Ways), R/o Bahadari, Paniala,
District D.I. Khan.

REFERENCE UNDER SECTIONS 9/10 OF THE NATIONAL
ACCOUNTABILITY ORDINANCE, 1999.

JUDGMENT

1. Accused Abdul Munir Khan S/o Jehangir Khan, (LAC Motorways), R/o Bahadari, Paniala, District DI Khan is facing trial in reference No. 8/2007 for the offence of corruption and corrupt practices punishable u/s 9/10 of National Accountability ordinance, 1999. Brief facts are that the government launched a project known as Islamabad Peshawar Motorways Project, i.e. M-1, for the construction of Motorways on an area the length of which was 154-54 KM and the same motorway was to pass through five districts namely Swabi, Mardan, Nowshera, Charsadda and Peshawar of the NWFP. Complaints were received with regard to malpractices and illegalities, committed during the process of determination of compensation of the acquired land payments of the land to the affected persons.
2. Investigation in the case was carried out by Qamar Zaman inspector NAB (F) and after investigation, he submitted his report. The investigation revealed that accused Abdul Munir with the

(9)

connivance of other co-accused fraudulently changed the classification and categorization of lands and did not consider one year average statement during assessment of price of the land and as such accused alongwith his co-accused awarded enhanced rates and thereby caused a loss to public exchequer to the turn of Rs.8,21,18,11/-. The details of Awards, made by the accused with regard to the land mentioned above are given on the first page of the original reference. As act of he accused was failing within the meaning of corruption and corrupt practices punishable u/s 9/10 of national accountability ordinance, 1999 thereof against him reference was filed.

3. Previously accused absconding in the case therefore, against him and his co-accused reference was filed and the accused was preceded in view of section 512 Cr.P.C. when the accused was arrested, against him, supplementary reference was filed for conducting trial against him. Supplementary reference is available on page 53 of the regard. It is pertinent to note that in thus case trial was conducted by the Ex-Judge accountability Court No. III, Peshawar (Attaullah Khan) but before pronouncing judgment, judge accountability court III Peshawar was transferred so the present case was entrusted to this court for the purpose of disposal vide order Cr. Misc. No.8/92007 dated 2.3.207 by the august Peshawar high court Peshawar. On receipt of supplementary challan (Reference) accused was summoned from Jail and against him charge was framed on 8.8.2006 by the learned judge accountability court No. III Peshawar. As the accused did not surrender to the charge therefore NAB/Prosecution was asked to produce evidence against accused. Prosecution produced 8 PWs in all. The brief description of evidence of each PW is given hereinafter.

- (10)
4. PW-I is Manzoor Ahmad stenotypist National High ways authority Peshawar. According to him he served NHA as stenotypist up to June 2006 at district Nowshera and thereafter his office was shifted to Peshawar. His duty was to act as stenotypest and also to keep English record consisted of Notifications etc pertaining to awards of the lands for the purpose of construction of Motorway. Before him the above record was to keep by one Umar Said Girdawar whereas some of the record, after the retirement of Umar Said Girdawar used to be remained in possession of accused. He in his statement produced some notifications and also the required one year average statement with regard to the land in question. This witness also provided to the I.O copies of acquaintance Roll and One year average statement of the Muzas i.e. Merakandar, Mola Kalay, Banda chail, Behram Kalay, Kheshki Payan, Kheshki Bala and Kotarpan. Copy of the Notification dated 19.7.2001 regarding the transfer of accused was also produced by him which is Ex. PW-1/1. Copies of the Notification U/S 4,6 and 17, one year average (Nulchahi), one year average (Shah Nehri), one year average (Banjar Qadeem) kind wise list and award No. 18 dated 2.11.1998 of Banda Chail consisting of 14 sheets appearing at pages 45 to 58 of the reference Book Ex. PW-1/4.
 5. PW-2 is statement of Sahar Gul assistant secretary Board of Revenue Civil Secretariat Peshawar. He in his statement produced a letter No.27526/Rev.V/M.Way dated 22.11.2001 which is Ex.PW-2/1 and is available on page 601 of the reference book. Per this letter the LAC is required to approach Board of revenue for approval if the compensation amount exceeds Rs.20 laces.
 6. PW-3 is Rahmanuddin Patwari Halqa Jalozei Nowshera. Per him vide mutation No.5840 attested on 25..6.99 land measuring 562

(10) (11)

kanals 15 marlas in Mauza Kotarpan was acquired for a sum of Rs.39,97,104/- for the purpose of constructing Motorways. Vide Mutation No.3011 attested on 2.1.99 land measuring 490 kanals 16marlas situated in Muza Merakandar was acquired for a sum of Rs.4,35,052/- for Peshawar Islamabad Motorways Project. This PW produced relevant revenue record consisting of registration of Mutations, Khasra Girdwari and one year average kind wise. The photocopies of the same were already on the file taken into possession by the I.O and Khasra Girdawari from Khareef 1996 to Rabbi 2000 of Mauza Merakandar is available on page 206 of the reference and is Ex.PW-3/1. One year average of Nulchahi land from 9.2.1997 to 10.2.1998 of Mauza Kandar is available on page 203 and is Ex.pW-3/1. One year average of Shah Nehri land from 9.2.1997 to 10.2.1998 of Mauza Kandar is available at age 604 and is Ex.PW-3/3. He also produced one year average of Barani land of Mauza Merakandar from 9.2.97 to 10.2.1998 which is one page 605 of the reference book and is Ex.pW-3/4. One year average consolidated from 10.2.1997 to 9.2.1998 of Mauza Merakandar available at Page 607 is Ex.PW-3/6, he also produced one year average Barani land from 10.2.97 to 9.2.1998 of Mauza Merakandar which is on page 609 which is Ex.PW-3/7. Copy of mutation No.3021 was also produced by him appearing at pages at pages 610 to 622 of the reference book which are consisting of 13 sheets and is Ex. PW-3/8. Copy of Khasra Girdawari of Mauza Kotarpan was also proceed by this PW on page 634 to 637 of the reference book consisting of 4 sheets and is Ex.PW-3/9.

7. PW-4 is Syed Rasool Shah who in his statement, stated that vide mutation No. 10507 dated 29.6.1999 land measuring 585 kanals 19 marlas in village Baran Kalay was acquired for Islamabad Peshawar

(12)

Motorway for Rs.2,01,32,475/-. He in his statement stated that all the lands in this village are non-commercial and Shah Nehri kind. He also produced in his statement Khasra Girdawari, one year average available on the file. One year average statement from 21.8.99 to 20.8.2000 of Mauza Behram Kalay was exhibited which is Ex.PW-5/1. In last para of his examination one year average statemtn for the period 14.11.96 to 13.11.97 which is Ex.PW-5/2.

8. PW-5 is Gohar Ali Patwari Halqa Akbarpura who during the relevant time was posted at Patwari Halqa at kheshki Bala District Nowshera. According to him vide mutation No.4830 attested in the year 1999 land measuring 250 kanals 13 Marla in Kheshki Balan was acquired in consideration of Rs.19,82,975/- for the construction of Motorway. He produced copy of mutation which is Ex.PW-6/1 and having page 32 on file. He had prepared one year average of Mauza Kheshki Bala for the period 14.11.92. This Ausat Yaksal was with regard to the land Shah Nehri in nature which is Ex. PW-6/2. Ausat Yaksala pertaining to land Banjar Qadeem is Ex.PW-6/3 while Ausat Yaksala relating to Makhloot kind is Ex.PW-6/4. The notification of acquiring of land is Ex.PW-6/7 having 18 sheets. Khasra Girdawari for the year 1995 to 1998 was also produced by him which is Ex.PW-6/5.
9. PW-6 is Aurangzeb Khan DCO. Per Him was assistant commissioner Nowshera in the year 1998 and he was appointed as local commissioner for the determination of land alue of the land in question but mean while his transferred was ordered therefore, he could not submit report.
10. PW-7 is Jamal Abdul Nasir Patwari Halqa tajobaja, During the relevant period of acquisition of land in question, he was posted as Patwari Halqa Banda Chail and Mauza Mola Kalay district.



(13)

Nowshera. Per him 27 kanals 6 marlas of land in Mauza Banda Chail was acquired for Islamabad Peshawar Motorway, Project and an area of 264 Kanals one marlas was acquired in Mauza Mola Kaly. Mutation No. 1424 was attested on 12.12.98 for an amount of Rs.19.06.240/in favour of Islamabad Peshawar Motorway, Mutation No. 360 in the year 1999 was also attested for Rs.37.62,625/- in Mauza Mola Khasra girdawari from Rabbi 97 to khareef 99 was also placed on the file having Ex.PW-8/3. Khasra girdawari from Khareef 97 to Khareef 99 of village Mola Kalay is Ex.PW-8/4. One year average statement for period 14.11.96 to 14.11.97 of Mauza Banda Chail (Chich) is Ex.PW-8/5 whereas one year average statement from 14.11.96 to 14.11.97 of Mauza Mola Kalay is Ex.PW-8/6.

11. PW-8 is Qamar Zaman inspector special Branch Peshawar who conducted investigation in the present case. Per him there was information that in the Islamabad Peshawar motorway project the LAC fixed exaggerated amount about compensation which was to be paid to the landowners whose lands were to be acquired for the purpose of construction of Motorway. He stated in his statement that during preliminary investigation accused Abdul Munir avoided his lawful arrest and against him warrant was issued by Chairman NAB Islamabad on 4.5.2002 which is Ex.PW-9/1 having page No.17. During investigation this PW took into possession revenue record from the offices of LAC, NHA and revenue circle of district Nowshera. The record transpired that accused Abdul Munir announced awards of lands measuring 490 kanals 16 marlas for the construction of Rashakai camp office. In Award 77 kanals 6 marlas in Mauza banda Chail was made. In Award 77 kanals 6 marlas in Mauza Banda Chail was made. In award from land measuring 264 kanals one marla at Mauza Mol aKalay district Nowshera, award for

land measuring 388 kanals at village Kotarpan were made. According to him during fixation of rates of the land subject matter of the awards, accused Abdul Munir ignored the rates mentioned in one year average statement. The accused had also changed the classification/kind of land by declaring some of the land being commercial and residential and in fact that was not so. And as such caused huge loss to the public exchequer.

12. This PW also stated that the accused failed to obtain sanction of SMBR because the cost was more than Rs.20 lacks and in case the cost exceeds Rs.20 lacks, sanction of SMBR is essential. He recorded statements of PWs u/s 161 Cr.P.C. and then submitted final report to the Chairman NAB Islamabad. The final report is Ex.PW-9/2. Feeling himself satisfied, the chairman NAB ordered the filling of reference. The reference is Ex.PW-9/4.
13. When evidence of the prosecution was recorded thereafter statement of the accused in view of section 342 Cr.P.C was recorded on 16.10.2006. The accused denied entire case of the prosecution. In defence he filed a statement u/s 265-F Cr. P.C. which is available on the file on page 865. Accused Abdul Munir got recorded his statement on oath in view of 340 (2) Cr. P. C on 7.4.2007 and 19.5.2007.
14. learned special prosecutor. NAB (F) Haider Ali and syed Zaffar Abbas Zaidi Advocater learned counsel for the accused argued the case. Learned counsel for the accused also filed written arguments which are available on the file.
15. Haider Ali. Special Prosecutor, NAB (F) argued that the accused has misused his powers during in acquisition of land for the pupose of Islamabad Peshawar Motorway M-1. the accused has committed a fraud and a such caused huge loss to the Public Exchequer. He

17.  
further argued that the prosecution has proved its case through documentary evidence and all of the witnesses are consistent on each and every point. No contradiction is found in the statements of PW s. Accused also remained absconder which flashes upon his guilt. At last he submitted that prosecution has proved its case through documentary and oral evidence therefore accused is liable to be convicted in accordance with law.

16. On the other hand Syed Zaffar Abbas advocate, counsel for the accused vehemently argued that accused is innocent. The accused has been falsely implicated in the present case. There is no cogent evidence which connects the accused.
17. After hearing arguments of the special prosecutor and defence counsel and going through the record my findings are given as under:
18. It is an admitted fact that accused Abdul Munir was land acquisition collector during acquisition of land in question because he has not defined this fact even in his statement recorded u/s 342 Cr.P.C as well as statement recorded u/s 340 (2) Cr. P.C. more so the awards available on the file also bear the signatures of accused therefore to this effect there is no doubt that accused Abdul Munir was LAC and he made awards with regard to the land in question.
19. The main allegations against the accused are that, during the acquisition proceedings he ignored the one year average statement and fixed enhanced rates at his own. To this effect to award No. 14 available on page 43 to 47 made by the accused. This award reveals that it was made with regard to the accused on his own divided said land into four categories i.e. commercial, residential, non commercial and non residential and Ghairmumkin Kanda land but this fact i.e. categorization of land is not mentioned in the revenue

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record but he on his own without proof categorized the same. About the categorically particularly commercial and residential, revenue papers i.e. Ausat yaksala and Khasra Girdawari are silent. The accused was bound to proceed according to the revenue papers while fixing rates of the land because presumption of truth is attaché to the revenue papers in view of sections 52,53 of land revenue act read with articles 129 illustration G of the Qanun-e-Shahadat, so act of the accused with regard to the categorization is totally against law and fact.

20. As far as fixation of rates are concerned on page 4 of the award it is clear that the rate of commercial proper was fixed by the accused Rs.8,000/- per marla. Residential land was valued Rs.4200/- per marla, non commercial/non residential land was valued Rs.1750/- per marlas and Ghairmumkin kanda was valued Rs.50 per marla. These rates do not tally with the rates mentioned in Ausat Yaksala available on pages 605 to 609 Ex.PW-4/1 Ex.-4/6. These Yaksalas reveal that the rate of Barani land is Rs.127/38 per marla, Nulchahi Rs.836/- per marla and Makhloot Rs.5482/45 per marla. So keeping in view the rates mentioned in Ausat Yaksala and award there is gross different in it. No cogent reason has been given by the accused as to why he has ignored the rates mentioned in ausat yaksala and fixed the rates as on his own.
21. Now I take into account award No. 20, made by the accused with regard to land measuring 388, kanals in Kheshki Payan. In this award he (accused) fixed Rs.1500/- per marlas of banjar qadeem/Jadeed and Rs.300/- of Ghairmumkin land whereas ausat Yaksala ex.PW-7/3 of Mauza Kheshki Bala reveals that Rs.829/53 was the rate of per marl,a nulchahi Rs.340/42 per marl and Barani/Makhloot Rs.217-per marla. So the rates mentioned in award

are high than the rates mentioned in ausat Yaksala. And to this effect no solid reason has been shown by the accused as to why he has fixed high rates in the award.

- 22. Award No. 26 had been made about 598 kanals 6 marlas situated at village Behram Kalay, page 4 of this award reveals that rates of shah nehri/irrigated land was fixed by the accused Rs.1500/- per marl, banjar qadeem/jaded Rs.500/- per marla and ghairmumkin Rs.300/- per marla. Whereas in Ausat Yaksala ex.PW-5/2 on page 636 reveals that the rate of Shah nehri land is Rs. 391/95 per marla. Whereas at one place the rate of Shah Nehri land has been shown Rs1438/75 per marla. SO contradiction in rates is also found in award and ausat Yaksala with regard to property situated in village Behram Kalay.
- 23. Award No. 21 available at page 116 reveals that the same was made for 250 kanals 13 marlas land situated at Kheshki Bala. Page 4 of this award reveals that rate of Shah Nehri/irrigated land was fixed Rs.1500/- per marla. Barani rs.1000/- Banjar Qadeem/Jadeed Rs.500/- per marlas and Ghairmumkin Rs.300/- was fixed by the accused. Whereas Ausat Yaksala Ex.PW-7/3 on page 630 of the reference reveals that Rs.829/53 is the rate of shah nehri land per marla. Banjar Qadeem was valued Rs.327/12 per marla nad Makhloot was taken to be Rs.303/48 per marla. So in this case too ausat yaksala and award are not at par with regard to rates.
- 24. Award No. 19 which had also been made by accused, available on page 71 to 74 of the reference book reveals that page No.3 of it, the rates of Shah Nehri land in Mauza Mola Kalay was Rs.1500/- per marla. Barani Rs.1000/- Banjar Qadeem/jaded Rs.500/- and Ghairmumkin Rs.300/- per marl. Whereas ausat Yaksala Ex.PW-8/6 on page 627 of the reference book reveals that the rate of per marla

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in the said village is Rs.287/94. So both these documents are not in consonance with regard to the rate of land.

25. Award No. 18, made by the accused, in connection of land 77 kanals 6 marlas at Banda Chail, page 3 of this award is clear about the rates of the land. Shah Nehri and other irrigated land Rs.1500/- per marla. Barani Rs.1000/- per marla. Banjar Qadeem/jaded Rs.500/- per marla and Gharimumkin land R.300/- per marla were valued. Whereas ausat Yaksala which is Ex.PW-8/5 having page No.626 reveals the rate of per marla of Shah Nehri land Rs.536/21. So in this case too rates are different in award and ausat Yaksala.
26. Award No. 30 which is made about land measuring 562 kanals 15 marlas at Mauza Kotarpan. This award is available on page 165 to 172. At page 5 of the award it reveals that in this case the accused categorized the land in question into three categories i.e. commercial land, residential land and agricultural land and fixed the rate Rs.13500/- per marla and Rs.8500/- marla respectively. Khasra Girdawari Ex.PW-3/9 (2 sheets) on page 637 reveals that there is no mentioned word commercial or residential property but the entire property has been shown to be Shah Nehri and Banjar Qadeem. But on a very small portion of this property Abadi has been shown. Even Banjar Qadeem/barani is also found in the land situated in Mauza Kotarpan but the accused has not given attention to this fact. It mean that accused has haphazardly determined the price and the kind.
27. All the witnesses who produced Ausat Yaksalas were cross-examined by the defence but nothing favorable was brought from their mouth to fayour the accused
28. More so during the statements made by the accused after the close of evidence of the prosecution. So the statements of the accused could not be4 relied upon.

- (19)
29. Keeping in view the above situation it is clear that the accused has not properly categorized the same.
 30. Under paragraph-6 of Guidelines for the implementation of Land Acquisition Act 1894 whenever the estimated cost of acquired land exceeds Rs. 20 lacs, the LAC is required the approach Board of Revenue for the approval but in this case the accused violated the said rules and never approached that the accused even did not care for the well established rules but rather proceeded according to his own motion.
 31. Case of the prosecution is entirely based on documentary evidence and the prosecution was able to produce the required documents which were necessary to prove the guilt of the accused.
 32. L.O of the case i.e. PW-8 namely Qamar Zaman was cross-examined at length but from his mouth too no favorable points were brought on record which may give benefit to the accused. It is a fact that the learned Accountability Court No has acquitted some of the accused. I, Peshawar. But case of those accused was entirely different from the case of present accused.
 33. In view of the above discussion I am of the view that the prosecution has proved the case against the accused therefore the accused is found guilty of the offence. So accused Abdul Munir Khan S/O Jehangir Khan. (LAC Motorways), R/O Bahadari, Paniala, District D.I. Khan is convicted under Section- 10 of the National Accountability Ordinance 1999 and on conviction he is sentenced to undergo Four (4) Years Rigorous Imprisonment (R.I) and to pay a fine of Rs.8,25,00,000/- (Eight Crores & Twenty Five Lack only). In default of payment he has to surther Two (2) Years Simple Imprisonment. Benefit of section 382 (b) Cr.P.C is extended to the accused. Acetified/attested copy of this Judgment be

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immediately provided today to the accused and to this effect his signature be obtained as token of its receipt on the margin of order sheet. The accused is informed that he has a right to appeal against this judgment within Ten (10) days from today. (In the competent court) and he may, if he so like or is advised. File such appeal through his counsel/prisons authorities, within the specified period. The case property if any be disposed of according to law on completion of period of limitation provided for appeal/revision and if an appeal or revision is filed then the same would be kept pending till the order of the Appellate Court. The accused is present in custody and he is sent to Jail through Warrant of committal for undergoing the sentence. Another copy of this judgment be sent to the Chairman National Accountability Bureau, Islamabad / Director General NAB (F). Peshawar, in reply to his Reference. File be consigned to the record room.

Announced.
25.7.2007.

(KHALID BADSHAH)
JUDGE
ACCOUNTABIL COURT No. II,
NWFP, PESHAWAR.

Certified that this Judgment consists of 12 pages and each page is duly signed by me and also certified under section 364 Cr.P.C

Dated 25.7.2007.

(KHALID BADSHAH)
JUDGE
ACCOUNTABIL COURT No. II,
NWFP, PESHAWAR.

B

ACCOUNTABILITY COURT NO. II, NWFP, PESHAWAR.

Reference No. 12/2007

31-A

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State..... Vs..... Abdul Munir Khan S/O Jehangir Khan,
(LAC Motorways), R/O Bahaduri, Panjala,
District D.I. Khan.

PROSECUTOR GENERAL, NWFP, PESHAWAR
ACCOUNTABILITY ORDINANCE, 1999.

JUDGMENT

1. Accused Abdul Munir Khan S/O Jehangir Khan, (LAC Motorways), R/O Bahaduri, Panjala, District D.I. Khan has been sent to this Court to face trial in Reference No. 12/2007 w/s 31-A of National Accountability Ordinance, 1999.
2. Brief Facts of the case are that accused Abdul Munir Khan remain involved in case of corruption and corrupt practices punishable w/s 9/10 of National Accountability Ordinance, 1999 as the accused during acquisition of land for Islamabad Peshwar Motorway, M-1, caused loss of huge amount to the Public Exchequer due to his fraudulent act. Accused Abdul Munir Khan remained absconder in the case to avoid his arrest and trial in the case of corruption and corrupt practices.
3. Subsequently accused was arrested and against him two References were sent to the Court w/s 9/10 and 31-A of National Accountability Ordinance, 1999, respectively. In the instant case charge against the accused w/s 31-A was framed to which he pleaded not guilty therefore prosecution was tasked to produce evidence against him. Prosecution produced two witnesses in all.
4. PW-1 is Riaz Ahmad Inspector/SHO who was entrusted with a warrant of arrest against Abdul Munir Khan accused. Pursuance to the warrant PW-1 raided house of the accused but he could not find the accused.
5. PW-2 is Qamar Zaman Khan Inspector who during the relevant period was posted as Inspector in NAIB (F) Peshawar. This witness submitted an application with a request for initiating proceedings against the accused w/s 31-A National Accountability

REGISTRAR
Accountability Courts
N.W.F.P. Peshawar
12/9/11

ACCOUNTABILITY COURT NO II NWFP PESHAWAR

Reference No. 12/2007

State Vs..... Abdul Munir Khan S/o Jehangir Khan (Lac Motorways)
R/o Bahadari Paniala District D.I Khan.

REFERENCE UNDER SECTION 31-A OF THE NATIONAL
ACCOUNTABILITY ORDINANCE 1999

JUDGMENT

1. Accused Abdul Munir Khan S/o Jehangir Khan (LAC Motorways) R/O Bahadari, Paniala, District D.I Khan has been sent to this Court to face trial in Reference No 12/2007 u/s 31-A of National Accountability Ordinance 1999.
2. Brief facts of the case are that accused Abdul Munir Khan remain involved in case of corruption and corrupt practices punishable u/s 9/1 of National Accountability Ordinance, 1999 as the accused during acquisition of land for Islamabad Peshawar Motorway, M-I caused loss of huge amount to the Public Exchequer due to his fraudulent Act. Accused Abdul Munir Khan remained absconder in the case to avoid his arrest and trial in the case of corruption and corrupt practices.
3. Subsequently accused was arrested and against him two References were sent to the Court u/s 9/10 and 31-A of National Accountability Ordinance, 1999 respectively. In the instant case charge against the accused u/s 31-A was framed to which he pleaded not guilty therefore prosecution was asked to produce evidence against him. Prosecution produced two witnesses in all.
4. PW-1 is Riaz Ahmad Inspector / SHO who was entrusted with a warrant of arrest against Abdul Munir Khan accused. Pursuance to the warrant PW-1 raided house of the accused but he could not find the accused.
5. PW-2 Qamar Zaman Khan Inspector who during the relevant period was posted as Inspector in NAB (F) Peshawar. This witness submitted an Application with a request for initiating proceedings against the accused u/s 31-A National Accountability

Special Prosecutor,

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Ordinance, 1999. After examining of PW-1 and 2 Haider Ali, Special Prosecutor, NAB (P) closed evidence for the prosecution on 30.6.2007.

6. Statement of accused u/s 342 Cr.P.C. was recorded on 25.7.2007 wherein he denied case of the Prosecution.

7. Arguments of Haider Ali, Special Prosecutor, NAB (P) and Syed Zafar Abbas Zaidi Advocate defence counsel were heard and record perused.

8. PW-1 Kinz Ahmad Inspector SHO stated that the original record was not before him at the time of his examination in the Court but rather there is a note at the end of examination in chief of PW-2 wherein the Public Prosecutor categorically admitted the fact that original record pertaining to the abscondance of accused was missing.

9. PW-2 in his examination in chief stated that he only moved an application for initiating proceedings against the accused u/s 31-A National Accountability Ordinance, 1999.

10. The statements of these PWs are not sufficient for conviction of the accused. Besides the statements of PW-1 and PW-2 there is no cogent evidence in the form of documentary or oral which may establish the charge of abscondance against the accused. Therefore, this can easily be held that there is no case against the accused and the Prosecution has miserably failed to bring home charge of 31-A against the accused, so as a result accused Abdul Munir Khan S/O Jehangir Khan, (LAC Miorways), R/O Bahaduri, Panjvali, District D.I.Khan is acquitted from the charge of 31-A of National Accountability Ordinance, 1999. Accused Abdul Munir Khan in custody is present he be set forth with if not required in any other case.

Announced
25.7.2007.

(KHALID BAKHTSHAH)
JUDGE
ACCOUNTABILITY COURT NO. II,
NWFP, PESHAWAR.

Certified that this Judgment consists of 2 pages and each page is duly signed by me and also certified under Section 364 Cr.P.C.

Dated 25.7.2007.

(KHATIBUDDIN)
JUDGE
ACCOUNTABILITY COURT NO. II,
NWFP, PESHAWAR.

Signature of Khateebuddin
18/9/11

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Ordinance 1999. After examining of PW-1 and 2 Haider Ali, Special prosecutor, NAB (F) closed evidence for the prosecution on 30.06.2007.

6. Statement of accused u/s 342 Cr.PC was recorded on 25.07.2007 wherein he denied case of the prosecution.
7. Arguments of Haider Ali. Special Prosecutor NAB (F) and Syed Zadar Abbas Zaidi Advocate Defence counsel were heard and record perused.
8. PW-1 Riaz Ahmad Inspector SHO stated that the original record was not before him at the time of his examination in the court but rather there is a note at the end of examination in chief of PW 1 wherein the Public Prosecutor categorically admitted the fact that original record pertaining to the abscondance of accused was missing.
9. PW-2 in his examination in Chief stated that he only moved an Appellant for initiating proceedings against the accused u/s 31-A National Accountability Ordinance 1999.
10. The Statement of these PWs are not sufficient for conviction of the accused. Besides the statements of PW1 and PW2 there is no cogent evidence in the form of documentary or oral which may establish the charge of abscondance against the accused. Therefore, this can easily be held that there is no case against the accused and the production has miserably failed to bring home charge of 31-A against the accused. So as a result accused Abdul Munir Khan S/o Jehangir han (LAC Motorways) R/o Bahadari Paniala District DI Khan is acquitted from the charge of 31-A of National Accountability Ordinance 1999. Accused Abdul Munir Khan in custody is present he be set forth with if not required in any other case.

Announced
25.7.2007

(KHALID BADSHAH)
JUDGE
ACCOUNTABILITY COURT NO II
NWFP PESHAWAR

Certified that this Judgment consists of 2 pages and each page is duly signed by me and also certified under section 364 Cr.PC

Dated: 25.7.2007.

(KHALID BADSHAH)
JUDGE
ACCOUNTABILITY COURT NO II
NWFP PESHAWAR

Annex C
24

BEFORE THE AUGUST PESHAWAR HIGH COURT PESHAWAR.

Eht. Cr. Appeal No. 09/2007

Abdul Muneer S/O Jehangir Khan (LAC Motor Ways), R/O Bahaduri, Panlala,
District DIKhan.

Appellant

Vs.

1. The State.
2. Chairman NAB, Islamabad.

Respondents

APPEAL AGAINST THE JUDGMENT AND ORDER OF THE LEARNED JUDGE, ACCOUNTABILITY COURT-II, NWFP, PESHAWAR, DATED 25-7-2007 VIDE WHICH THE APPELLANT HAS BEEN CONVICTED UNDER SECTION 10 OF THE NATIONAL ACCOUNTABILITY ORDINANCE, 1999 AND SENTENCED TO 4 YEARS R.I. AND HAS FURTHER BEEN ORDERED TO PAY FINE OF RS.8,25,00,000/- OR IN DEFAULT TO SUFFER 2 YEARS MORE S.I. THE BENEFIT OF SECTION 382-B HAS ALSO BEEN EXTENDED.

Respectfully sheweth:

1. Brief facts giving rise to the present appeal are that a Reference was filed against 15 persons including the appellant. The appellant was appointed as Land Acquisition Collector for acquiring land for the construction of Motor Ways and in all 7 Awards were given bearing Nos. 14, 18, 19, 20, 21, 26 and 30 in between 30-8-1998 to 4-6-1999. It was alleged in the Reference that the Awards were excessive and that Ausat Yaksala was ignored and further classification of the land was changed

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to Commercial and Residential and further that sanction of the Senior Member Board of Revenue was not obtained because the amount was in excess of Rs.20 lac which was violative of the guidelines provided for acquisition of the land. In this regard in addition to the appellant, one Lt. Col.(R) Abdul Ghaffar , Ex-Director of National Highway Authority was also arrayed as accused. 13 beneficiaries who had received the compensation were also added as beneficiaries/accused whose land was acquired. When the trial continued, the appellant was not in attendance and, therefore, rest of the 14 accused were tried with particular reference to Award No. 14 of 30-10-1998 and No.30 of 4-6-1999. In fact in these two Awards, the assessment was made by compensating the owners for their properties at the rate varying from Rs.850/- per Marla to Rs.8000/- per Marla. In rest of the 5 Awards, a flat rate was assessed which Rs.1500/- per Marla for Shah Nehri land and Rs.300/- per Marla for Ghair Mumkin land.

2. That the earlier trial was conducted, as submitted above, with reference to Awards No.14 and 30 in which the rates varied from Rs.850/- to Rs.8000/- per Marla. The learned trial Court discussed the evidence and specifically concluded that there was no collusion between the Land Acquisition Collector (appellant) and the beneficiaries. It further discussed the evidence and held that the assessment should have been made and was made in accordance with the provisions of the Land Acquisition Act and observed that in the same area, residential and commercial localities had emerged in the light of facts that there is Industrial Estate, Locomotive Factory, Roads and Abadi. It was also observed that the Provincial Government had earlier acquired land measuring 178 Kanals for 7 Marla Housing Scheme which was then transferred to National Highway Authority for this Motor Ways Project

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for Rs.20 million which comes to Rs.1,12,359.55 per Kanal. The learned trial Judge also noticed that vide various sale deeds one Kanal of land was sold for Rs.3,40,000/- in 1995 and 2 kanal of land for Rs.2,02,000/- in 1993. In the wake of these findings, all the accused were acquitted. Copy of the judgment dated 10-2-2004 is also enclosed as Annexure-A for ready reference in which the learned trial Judge discussed all these matters. Since the appellant was not present at the trial, therefore, after his surrender, he was tried again because in addition to Awards No.14 & 30, he had also announced 5 other Awards as mentioned above. The prosecution produced exactly the same evidence which was produced in the earlier trial. In the cross examination certain facts were highlighted but it included all the facts which were earlier brought on record. In addition to it, the appellant brought on record a copy of the judgment of the learned Additional District Judge Nowshera dated 11-12-2006 in which for similar land acquired for similar purpose the rate was enhanced by the learned Referee Judge from Rs.1098/- per marla to Rs.7000/- per Marla on the basis of a similar Award No. 425 of 30-11-1996. As submitted above, in the Reference against the appellant, the Awards are between 30-10-1998 and 4-6-1999. It is worth mentioning that the NAB to the best of the appellant's knowledge have not gone in appeal against the acquittal recorded earlier vide judgment dated 10-2-2004. On conclusion of the trial against the appellant, all these facts were brought on record alongwith documents vide which the Deputy Commissioners of Nowshera and Charsadda had recommended that the land should be acquired in the whole of District Nowshera and Charsadda for the Motor Way Project at the rates of Rs.6000/- and Rs.8000/- per marla respectively and the necessary documents have been exhibited as

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Ex.PW.1/10-6, Ex.PW.1/10-7, Ex.PW.1/10-8 and Ex.PW.1/10-9. Similarly, Ex./PW.1/10-1 to 10-5 were also brought on record to this effect. The nature of land is almost the same because whole of the acquisition has been done in the Districts of Nowshera and Charsadda alongside the road for the construction of the Motor Ways Project. During the trial the appellant submitted his statement under Section 265-F Cr.P.C. which he later adopted in his statement under Section 340(2) Cr.P.C. so as to enable the prosecution to cross-examine and also got his statement recorded under Section 342 Cr.P.C. . On conclusion of the trial, the submissions were made on the lines as contained above. It was submitted that the copies of the Awards had been sent to the SMBR and further that the rates fixed by the appellant had been upheld by the learned trial Court and the accused have been acquitted and that their acquittal has not been challenged. A reference was also made to the judgment of the learned Additional District Judge, Nowshera . After hearing the parties, the appellant was convicted and sentenced as mentioned above. Copy of the judgment and order dated. 25-7-2007 is enclosed as Annexure-B.

3. That the appellant impugns his conviction and sentence before this Honourable Court, on inter alia, the following grounds :-

GROUNDS

- (A). That the impugned order is against law and facts.
- (B). That the learned trial Court has altogether failed to appreciate the law and the facts .

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- (C). That the learned trial Court has also failed to appreciate that the judgment delivered earlier in respect of a ^{nu} ~~case~~ ^{kaud} with reference to Awards No.14 and 30, has attained finality and as the judgment of the learned Additional District Judge Nowshera dated 11-12-2006 where for similar land rate of Rs.,7000/- per marla has been fixed on the Award of 30-11-1996.
- (D). That the learned trial Court has completely ignored that the land in District Nowshera acquired for the construction of Motor Ways Project is very precious and therefore, the assessment on the basis of one yearly average was not proper nor it is requirement of the Land Acquisition Act.
- (E). That the learned trial Court has failed to notice the correspondence between the NHA and the Commissioner Peshawar Division, Deputy Commissioners of Nowshera and Charsadda and the meeting held under the Chairmanship of the Minister because the owners of the land were not prepared to give the possession of the land. In any case the learned trial Court has completely lost sight of the fact that in determining the price of the land, Section 23 is conclusive and it does not furnish the one yearly average as its basis.
- (F). That there is no evidence of any collusion between the land owners and the appellant. On the contrary, the appellant also did not follow the rates fixed by the Deputy Commissioners of Nowshera and Charsadda and above all the Commissioner Peshawar Division and the Awards given by the appellant are on lower side by virtue of which an amount of Rs.80 lac was saved to the Government.

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Peshawar High Court
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(G). That the learned trial court has not discussed any of the evidence led or the submissions made on behalf of the appellant and the impugned judgment is outcome of not attending to the material facts on which the judgment is legally required to be based upon.

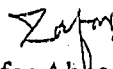
It is, therefore, humbly prayed that on acceptance of this appeal, this Honourable Court may graciously be pleased to set aside the impugned judgment and order of the learned Judge Accountability Court-II, Peshawar dated 25-10-2007 and the appellant may graciously be acquitted of the charge.


Your humble appellant

Abdul Muneer

Through counsel:

Dated: 1-8-2007


(Sayed Zafar Abbas Zaidi)
Advocate, Peshawar


Farmanullah Khattak
Advocate, Peshawar.

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Annex D
ANNEXURE

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BEFORE THE GOVERNOR NWFP PESHAWAR.

Mr. Abdul Munir (EG) BPS-17, Lastly on Deputation as (LAC),
Office of the Director (LM&IS), National Highway Authority,
Bana Banda, Raisalpur.....Appellant.

VERSUS

The Secretary Establishment.....Respondent.

DEPARTMENTAL APPEAL/REPRESENTATION
AGAINST THE ORDER DATED 4.3.2003
WHEREBY THE APPELLANT WAS REMOVED
FROM HIS SERVICE WITH RETROSPECTIVE
EFFECT TO 17.1.2002.

PRAYER:

*On consideration of this appeal, the
impugned order may be set aside and the
appellant may be re-instated with all back
benefits.*

R. SHEWETH:

1- That the appellant belongs to a respectable family of D.I. Khan and while was on deputation as LAC in the office of Director (LM&IS) National Highway Authority, a family enmity arose due to which there was grave danger to my and my family lives, therefore I remained absent from duty. When the enmity was locally compromised, then I returned to my duty where I got the knowledge about a reference was filed under National Accountability Ordinance 1999 against me. There after I surrendered before the law and was later on bail allowed to me by the Peshawar High Court on 6.2.09 and lastly I was released from jail on 19.2.09 after fulfillment of codal formalities. (Bail copy attached)
That during the period of absence ex-parte proceedings were initiating against the appellant and finally the appellant was removed from service under RSO-2000 read with rule 8A

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BEFORE THE GOVERNOR NWFP, PESHAWAR

Abdul Munir Khan (EG) BPS-17 Lastly on Deputation as (LAC) office of Director (LM&IS) National Highway Authority Bora Banda Risalpur

..... Appellant

VERSUS

The Secretary Establishment Respondents

DEPARTMENTAL APPEAL / REPRESENTATION
AGAINST THE ORDER DATED 04.03.2003
WHEREBY THE APPELLANT WAS REMOVED
FROM HIS SERVICE WITH RETROSPECTIVE
EFFECT I.E 17.01.2002.

Prayer:

On acceptance of this appeal the impugned order may be set aside and the Appellant may be re-instated with all back benefits.

Respectfully Sheweth:

1. That the Appellant belongs to a respectable family of D.I Khan and while was on deputation as LAC in the office of Director (LM & IS) National Highway authority, a family enmity arose due to which there was grave danger to me and my family lives, therefore I remained absent from duty. When the enmity was locally compromised, then I returned to my duty where I got the knowledge about a reference was filed under National Accountability Ordinance 1999 against me. There after I surrendered before the law and was later on bail allowed to me by the Peshawar High Court on 06.02.2009 and lastly I was released from Jail on 19.02.2009 after fulfillment of codal formalities. (Bail Copy attached)
2. That during the period of abscondance ex-parte proceedings were initiating against the Appellant and finally the Appellant was removed from service under RSO-2000 read with rule 8A

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of the E&D Rules 1973, vide order dated. 4.3.2003 with retrospective effect. (Removal from service order copy attached)

- 3- That since the order was not communicated to him because the said order was sent on wrong address but the appellant received the copy through his private means, hence the present Departmental appeal on the following grounds amongst the others.

GROUNDS:

- A- That the impugned order is illegal, against the mandatory provisions of the law and is also against the natural justice and equity and hence not tenable and liable to be set aside.
- B- That the impugned order has been passed in utter violation of the settled principle of law and respondent No.1 while passing the impugned order has been failed to fulfill the mandatory formalities provided for under the law and hence the order under appeal is bad in law and is not maintainable.
- C- That the appellant has performed his duties since 1980 up till 2002 without any objection from any quarter but was debarred from attending his duties due to unavoidable circumstances fully described above and his absence from service if any was not intentional which is excusable.
- D- That as it is evident from the impugned order that before passing the same no inquiry officer or inquiry committee has been appointed to the probe of allegations against the appellant nor any notice or summon has ever been issued or received by the appellant.
- E- That the penalty of removal from service by the respondent is very harsh in view of the lengthy spotless service of the appellant because the respondent while passing the impugned order has failed to take into consideration the dot less service of the appellant for about more than 21 years and has deprived him from the benefits of pension etc with the single stroke of pen which is against the natural justice the penalty if was advised should have been minor according to the peculiar circumstances of the case.

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That at any rate the impugned order is extremely illegal, irregular against the service rules and natural justice and hence calls for interference by this honorable forum.

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of the E&D vide order dated 04.03.2003 with retrospective effect.
(Removal from service order copy attached)

3. That since the order was not communicated to him because the said order was sent on wrong address but the Appellant received the copy through his private means, hence the present Departmental appeal on the following grounds amongst the others.

Grounds:

- A. That the impugned order is illegal, against the mandatory provisions of the law and is also against the natural justice and equity and hence not tenable and liable to be set aside.
- B. That the impugned order has been passed in utter violation of the settled principle of law and Respondent No 1 while passing the impugned order has been failed to fulfill the mandatory formalities provided for under the law and hence the order under appeal is bad in law and is not maintainable.
- C. That the Appellant has performed his duties since 1980 up till 2002 without any objection from any quarter but was debarred from attending his duties due to unavoidable circumstances fully described above and his absentia from service if any was not intentional which is excusable.
- D. That as it is evident from the impugned order that before passing the same no inquiry officer or inquiry committee has been appointed to the probe of allegations against the Appellant nor any notice or summon has ever been issued or received by the Appellant.
- E. That the penalty of removal from service by the Respondent is very harsh in view of the lengthy spotless service of the Appellant because the Respondent while passing the impugned order has failed to take into consideration the dot less service of the Appellant for about more than 21 years and has deprived him from the benefits of pension etc with the single stroke of pen which is against the natural justice the penalty if was advised should have been minor according to the peculiar circumstances of the case.
- F. That at any rate the impugned order is extremely illegal, irregular against the service rules and natural justice and hence calls for interference by this Hon'ble forum.

32

- G- That the appellant has been condemned unheard and no regular inquiry was conducted which is very necessary according to the norms of justice and Supreme Court judgments in which it has been held that regular inquiry is must for imposition of major penalty.
- H- That the impugned order has been passed with retrospective effect which the authority under the law and Supreme Court judgments could not do because no authority is empowered to pass an executive order with retrospective effect.
- I- That in similar cases the appellant have been re-instated either departmentally or by the NWFP Service Tribunal, therefore, under the principle of consistency as held by the Supreme Court of Pakistan in cases titled (i) Tara Chand VS Government 2005 SCMR 499 (ii) Hamid Akhtar Niazi VS Government 96 SCMR 1185 (iii) Government of Punjab VS Samina Parveen 09 SCMR 01. In all these cases /reported judgments it is held that " If a Tribunal or Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good Governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum--- All citizens are equal before law and entitled to equal protection of law as per Article 25 of the Constitution of Pakistan". Keeping in view of the above dictum appellant also deserved the same treatment of re-instatement in to service. (Re instatement order copy in r/o syed gul jamal attached)

It is, therefore, most humbly prayed that on acceptance of this appeal the impugned order may very kindly be set aside and the appellant may be re-instated with all back benefits.

Dated 17.3.2009

Abdul Munir Khan

Abdul Munir Khan

Appellant

Abdul Munir Khan

ABDUL MUNIR KHAN
S/O- JEHANGIR KHAN
H.NO. 71, STREET-3,
SECTOR- K-2, PHASE-III,
HAYAT ABAD, PESHAWAR

33



BETTER COPY

- G. That the Appellant has been condemned unheard and no regular inquiry was conducted which is very necessary according to the norms of justice and Supreme Court judgments in which it has been held that regular inquiry is must for imposition of major penalty.
- H. That the impugned order has been passed with retrospective effect which the authority under the law and Supreme Court judgments could not do because no authority is empowered to pass an executive order with retrospective effect.
- I. That in similar cases the Appellant have been reinstated either departmentally or by the NWFP Service Tribunal, therefore; under the principle of consistency as held by the Supreme Court of Pakistan in cases titled (i) Tara Chand Vs Government 2005 SCMR 499 (ii) Hamid Akhtar Niazi Vs Government 96 SCMR 1185 (iii) Government of Punjab VS Samina Parveen 09 SCMR 01. In all these cases/ reported judgments it is held that "if a Tribunal or Supreme court decides a point of law relating to the terms and conditions of a Civil Servant who litigated and there were other civil servants, who may not have taken any legal proceedings, in such a case the dictates of justice and rules of good Governance demand that the benefit of the said decision be extended to other civil servants also who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum--- All citizens are equal before law and entitled to protection of law as per Article 25 of the Constitution of Pakistan". Keeping in view of the above dictum Appellant also deserved the same order copy in r/o Syed Gul Jamal attached)

It is, therefore, most humbly prayed that on acceptance of this appeal the impugned order may very kindly be set aside and the Appellant may re-instated with all back benefits.

APPELLANT

— Sd —

ABDUL MUNIR KHAN
S/o Jehangir Khan
H. No. 71, Street 3,
Sector K-2, Phase-III
Hayatabad, Peshawar



34

GOVERNOR'S SECRETARIAT,
N.-W.F.P, PESHAWAR.

No. SO(A)1-2/GS/09/599
Dated 07.04.2009

SUBJECT:- APPEAL/REPRESENTATION.

I am directed to refer to your representation dated 17.03.2009, submitted to the Governor NWFP for reinstatement in service and to inform you that as your appeal preferring at this stage is time barred, therefore, it cannot be entertained.

Sd/-
MUHAMMAD JEHAN
SECTION OFFICER (ADMIN)

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 729/2009

Date of institution - 04.05.2009

Date of decision - 13.10.2009

Annex "E"
35

Abdul Munir Khan, P.C.S (EG) Ex. LAC National Highway Authority Motorway Bara
Banda District Nowshera, (Appellant)

VERSUS

1. Government of NWFP through Chief Secretary, NWFP, Peshawar.
2. Secretary Establishment, Government of NWFP, Peshawar..... (Respondents)

Appeal against Respondents order of 7th April 2009 whereby the appellant's departmental appeal/ representation against order No. SOEII (ED)2(38)/92, dated 4.3.2003 was not entertained.

Mr. Muhammad Zafar, Advocate..... For Appellant.
Mr. Ghulam Mustafa, For Respondents.

MR. SULTAN MAHMOOD KHATTAK..... MEMBER.
MR. BISMILLAH SHAH MEMBER.

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER: This appeal has been filed by the appellant against Respondents order of 7th April 2009 whereby the appellant's departmental appeal/ representation against order No. SOEII (ED)2(38)/92, dated 4.3.2003 was not entertained. He has prayed that the impugned orders may be set aside and the appellant be re-instated in service with all back benefits.

2. Brief facts of the case are that the appellant being qualified and eligible had initially joined service in 1980 as Inspector Income tax under the Federal Government. He was selected and appointed Tehsilder by the Government of NWFP in 1982 on the recommendation of NWFP Service Public Commission and the appellant promoted and appointed as an Officer in the regular PCS (Executive Group) BS.17 on 25th November 1992. Since then he has been serving as a regular PCS (EG) officer under the Government of NWFP. While serving on deputation with the National Highway Authority (NHA) as LAC in the office of Director (LM&IS) NHA a family enmity cropped up causing

imminent danger to his life. Under the circumstances the appellant was constrained to move away long with his family exile for some time and during that period he was unable to attend his official duties for the obvious reason. In the meanwhile, the respondent department initiated disciplinary proceedings against the appellant and removed from service vide order dated 4.3.2003 against which he preferred departmental appeals on 19.2.2009 and 17.3.2009 which was rejected on 7.4.2009. Hence, the instant appeal.

3. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the impugned order of termination of appellant from service was passed on 4.3.2003 without informing him on his residential address of Hayatabad, (Peshawar) as confirmed by the S.S.P D.I Khan. He further argued that the appellant having put in more than twenty one years of blotless service before his alleged absence from duty, was entitled to an equitable and just treatment for the blotless service already rendered prior to the unfortunate incidence. His third point was that an identical case of absence from duty without leave, the appeal was allowed by this Service Tribunal by setting aside the order of his removal from service. The last of arguments was that removal from service could not be made under Removal from Service Special Power (Ordinance 2000) without appointment of an Inquiry Officer and without conducting a proper inquiry in accordance with the law laid down by the Hon'ble Supreme Court of Pakistan in several cases as the appellant has completed more than 21 years of service before the alleged absence from duty and there is nothing adverse in his service record during that period.

5. The learned A.G.P argued that the penalty was imposed upon the appellant after adopting the procedure as laid down in Removal from Service (Special Powers) Ordinance, 2000 and he was given an opportunity to defend himself. The appellant was aware of the proceedings initiated against him but he absconded himself for fear of arrest by NAB authorities. No discrimination has been made with the appellant and all codal formalities under the rules/law have been fulfilled. The appellant proceeded on medical leave for 10 days w.e.f 7.1.2002 and after expiry of the said leave, he neither requested for extension in medical leave nor resumed his duty, rather he absconded himself due to his involvement in a corruption case and fear of arrest by the NAB authorities. All codal formalities were

37

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fulfilled against the appellant. Removal from Service notification was issued on 4.3.2003.


The impugned action was taken under the existing rules of law and according to the principles of justice. He prayed that the appeal may be dismissed.

6. After hearing the arguments on both sides, the Tribunal while agreeing with the arguments put forth by the learned A.G.P dismiss the appeal being without merit and time barred.

ANNOUNCED.

13.10.2009.


(BISMILLAH SHAH)
MEMBER.


(SULTAN MAHMOOD KHATTAK)
MEMBER.

(Appellate jurisdiction)

38

CPLA NO. 2-P/2009

Abdul Munir Khan, P.C.S (EG)
Ex.LAC National Highway Authority Motorway
Bara Banda District, Nowshera.

.....Petitioner

(Versus)

1. Government of N.W.F.P through Chief Secretary, Peshawar.
2. Secretary, Establishment, Government of N.W.F.P, Peshawar.

.....Respondents

CIVIL PETITION UNDER ARTICLE 212(3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE JUDGMENT AND ORDER DATED 13.10.2009 OF THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR, IN APPEAL NO.729/2009.

RESPECTFULLY SHEWETH:

Part-A

The points of law of great general public importance for consideration of this august court are as under:-

39

informing him on his residential address of Hayatabad, (Peshawar) as confirmed by the S.S.P. D.I.Khan, therefore, the impugned order of termination is against the law, rules and natural justice?

II. Whether the appellant having put in more than twenty one years of blotless service before his alleged absence from duty, was entitled to an equitable and just treatment for the spotless service already rendered prior to the unfortunate incidence?

III. Whether in an identical case of absence from duty without leave, the appeal was allowed by this Service Tribunal by setting aside the order of his removal from service and thus the petitioner was discriminated which is against Article 125 of the Constitution of Islamic Republic of Pakistan, 1973?

IV. Whether removal from service could not be made under Removal From Service Special Power (Ordinance 2000) without appointment of an Inquiry Officer and without conducting a proper inquiry in accordance with the law laid down by the Hon'ble Supreme Court of Pakistan in several cases as the appellant has completed more than 21 years of service before the alleged absence from duty and there is nothing adverse in his service record during that period?

V. Whether the petitioner proceeded on medical leave which was extendable in an emergency?

- VII. Whether the impugned action has been taken in violation of the established principles of equity and justice, justifying interference by this august court?
- VIII. Whether the judgment of Hon'ble NWFP Services Tribunal is against law in which the points raised by the petitioner have neither been discussed nor decided, which is not a legal judgment and liable to be set aside on this score alone?
- IX. Whether the Service Appeal of the petitioner was perfectly within time because the same was filed on 4.5.2009, while the departmental appeal was rejected on 7.4.2009 as the petitioner could legally wait for the decision of the same according to the dictum laid by the august Supreme Court?
- X. Whether the order of removal of petitioner from service was passed on the back of the petitioner without proper intimation/information to him, therefore, he filed the departmental appeal within time when he came to know of his removal order and after its decision filed appeal before Learned NWFP Services Tribunal within time?

Part-B

FACTS OF THE CASE

1. That the petitioner being qualified and eligible had initially joined service in 1980 as Inspector Income Tax under the Federal Government.
2. That the petitioner was selected and appointed Tehsildar by the Government of N.W.F.P in 1982 on the recommendation,

and appointed as an Officer in the Regular PCS (Executive Group) BPS-17 on 25.11.1992.

41

3. That since then he has been serving as a regular PCS (E.G) Officer under the Government of N.W.F.P.
4. That while serving on deputation with National Highway Authority as EAC in the Office of Director (IM&IS) NHIA, a family enmity cropped up causing imminent danger to his life, the petitioner was constrained under the circumstances to move away, alongwith his family exile for some time and during that period he was unable to attend his official duty for the obvious reasons.
5. That in the meantime the departmental allegedly initiated proceedings against the petitioner and removed him from his service vide order dated 4.3.2003.
6. That the petitioner preferred departmental appeal on 19.2.2009 and 17.3.2009 which were rejected on 7.4.2009. hence the filed Service Appeal before the Learned NWFP Services Tribunal which was dismissed vide judgment and order dated 13.10.2009 without discussing and deciding the pleas raised by the petitioner.
7. That the petitioner feeling mortally aggrieved against the order dated 13.10.2009 of the Learned NWFP Services Tribunal seeks leave to appeal to this august court on the law points and grounds mentioned in Part-A of this petition.

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... of the
Service Tribunal, as well as order of departmental authority
may be set aside and the petitioner may please be reinstated with back
benefits.

Drawn and filed by

(MIR ADAM KHAN)
ADVOCATE ON RECORD

CERTIFICATE.

Certified that no such Petition has earlier been filed by the
petitioner against the impugned judgment and order.

ADVOCATE ON RECORD

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Annex "F"

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

CIVIL PETITION NO. 2-P OF 2010

(On appeal from the judgment of the Peshawar High Court,
Peshawar dated 13.10.2009 passed in Appeal No. 729/2009)

Abdul Munir Khan ... Petitioner(s)

Versus

Government of NWFP through
Chief Secretary and another ... Respondent(s)

For the petitioner(s): Mr. Riaz Ahmed Khan, ASC
Mr. Mir Adam Khan, AOR

For the respondent(s): N.R.

Date of hearing: 11.3.2010

ORDER

JAWWAD S. KHAWAJA J.- The petitioner Abdul Munir Khan was Land Acquisition Collector. He impugns the judgment of the NWFP Service Tribunal, Peshawar dated 13.10.2009 whereby an appeal filed by him, has been dismissed. It is evident from the impugned judgment that the petitioner had absconded and had remained absent from duty. He was also subsequently tried and convicted in a corruption case prosecuted by the National Accountability Bureau. In the said case, he was convicted and sentenced to four years R.I.

2. The learned Tribunal has given cogent reasons for dismissing the petitioner's appeal. Learned counsel for the petitioner was not in a position to advert to any jurisdictional error or legal infirmity in the impugned judgment which would justify interference therein by this Court while exercising jurisdiction under Article 212(3) of the Constitution. However, in order to ensure completeness of this

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Chief Justice
Supreme Court of Pakistan
Peshawar

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judgment, we have noted the contention advanced by learned counsel that departmental inquiry was not held before the removal of the petitioner from service. We have considered the provisions of Section 5(4) of the Removal from Service (Special Powers) Ordinance, 2000, which stipulate as under:-

"5(4) The competent authority may dispense with the inquiry under sub-section (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry."

We also note that the petitioner stands convicted for corruption of an amount of Rs.8,41,88,000/-. In the circumstances, we are not inclined to exercise jurisdiction in this case. More so, because no substantial question of law of public importance has been pointed out. This petition, as a consequence, is dismissed and leave to appeal is declined.

Sd/ Jawwad S. Khawaja, J.
Sd/ Khalilji Amir Hussain, J.

Peshawar
11.3.2010
NOT APPROVED FOR REPORTING

Ejaz Goraya
[Signature]

Certified to be true copy

[Signature]
Supreme Court of Pakistan
Peshawar
17/3/16

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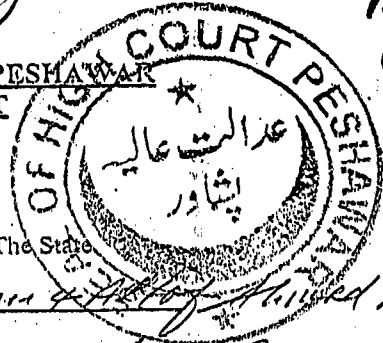
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Annex "G"

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

JUDGMENT
Cr. Appeal No.9-P/2007
Date of hearing09.09.2015



Abdul MuneerVs.....The State

Appellant(s) by Ziana Rehman & Asst. District Advocate
Respondent(s) Sd. M. Syed Azim and A.D.A. G.

IRSHAD QAISER, J:- Instant appeal is directed against Judgment and order dated 25.07.2007, passed by learned Judge Accountability Court-II, NWFP, Peshawar, in Reference No.8/2007 for the offence of corruption and corrupt practices punishable u/s 9/10 of National Accountability Ordinance, 1999, whereby appellant Abdul Muneer, was convicted u/s 10 of the National Accountability Ordinance, 1999, and sentence him to rigorous imprisonment for four (04) years and to pay a fine of Rs.8,25,00,000/- or in default to undergo two (2) Years S.I. The Benefit of section 382-B Cr.P.C has also been extended.

[Handwritten signature]

2. The brief but relevant facts of the case are that Government started a project known as Islamabad Peshawar Motorways Project for construction of Motorway on an area total length of 154.54 Kilo Meter and it had to pass through the land of five District of NWFP including the land of Nowshera, Charsadda, Swabi, Mardan and

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EXAMINER
PESHAWAR HIGH COURT
29 SEP 2015



Peshawar. The appellant was appointed as Land Acquisition Collector for acquiring land for the construction of Motorway and in all 07 awards in respect of seven villages situated in District Nowshera were given bearing No. 14, 18, 19, 20, 21, 26 & 30 in between 30.08.1998 to 04.06.1999 and after doing the needful compensation of acquired land was paid to the landowners. Subsequently complaints were received by the Chairman National Accountability Bureau to the effect that accused in connivance with others fraudulently and dishonestly got fixed the compensation of acquired land at inflated and exorbitant rates in violation of the provision of Land Acquisition Act and that they also obtained illegal pecuniary advantage by getting changed the classification/kind of acquired land into commercial and residential property and thereby caused financial loss of Rs. 8,21,18,119/- to the public exchequer. To ascertain the factual position, investigation was conducted through Qamar Zaman Inspector in the matter, who filed his report, after investigation, to the Chairman NAB, Islamabad. On the basis of report of the I.O, Reference against the appellant and acquitted co-accused u/s 9/10 of

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EXAMINER
Peshawar High Court
29 SEP 2015

47

National Accountability Ordinance, 1999 was filed before the Accountability Court for trial.

3. The appellant alongwith acquitted co-accused were summoned. Appellant was proceeded against under Section 512 Cr.P.C, while charge against co-accused was framed to which they did not plead guilty and claimed trial. Trial commenced, after completion of trial co-accused were acquitted and appellant Abdul Muneer was declared as proclaimed offender. When the appellant was arrested, supplementary Reference was filed against him for trial. He was summoned from Jail and charge was framed against him to which he did not plead guilty and claimed trial. In order to prove its case, the prosecution has examined 08 witnesses i.e PW-1 Manzoor Ahmad, Stenotypist National Highway Authority, Peshawar, who produced the record pertaining to the construction of Motorway. PW-2 Sahar Gul Assistant Secretary Board of Revenue Civil Secretariat, Peshawar produced a letter No.27526/Rev.V/M Way dated 22.11.2001. PW-6 Aurangzeb Khan was Assistant Commissioner Nowshera in the year 1998 and he was appointed as Local Commissioner for the determination of land, but meanwhile he was transferred and he

J. J.

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ATTESTED
EXAMINER
Peshawar High Court
29 SEP 2015

48

could not submit his report. PW-3 Rahamuddin Patwari Halqa Jaloza, PW-4 Syed Rasool Shah, PW-5 Gohar Ali Patwari Halqa Akbarpura, and PW-7 Jamal Abdul Nasir Patwari Halqa, Tarojaba, produced all the relevant revenue record pertaining to Motorway Project. PW-8 Qamart Zaman I.O, who conducted investigation, recorded statements of PWs u/s 161Cr.P.C and then submitted final report to the Chairman NAB Islamabad. After closing the prosecution evidence, statement of appellant was recorded u/s 342 Cr.P.C. In his statement he denied all the allegations figuring against him. In deference he filed a statement u/s 265-F Cr.P.C and also recorded his statement on oath u/s 340 (2) Cr.P.C. At the conclusion of trial appellant was convicted and sentenced through impugned Judgment and order dated 25.07.2007, The detail of which is given in para No.1 of this Judgment.

4. Arguments heard and record perused with the assistance of learned counsel for the parties.
5. The charge against accused/appellant is that he in connivance with his acquitted co-accused including landowners of the acquired land had fraudulently and dishonestly fixed the compensation of land situated in village Kotar Pan and Mera Kandar District Nowshera, acquired for construction

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ATTESTED
EXAMINER
29 SEP 2015

(49)

of Islamabad Peshawar Motorway Project (IPMP) at inflated and exorbitant rates in violation of the provision of Land Acquisition act and also obtained illegal pecuniary advantage by getting changed the classification/kind of acquired land in to commercial and residential property and thereby caused financial loss of Rs.8,21,18,119/- to the public exchequer and committed an offence u/s 9 (a)(vi) of National Accountability Ordinance punishable u/s 10 of National Accountability Ordinance.

6. There is no cavil to the proposition that an illegal act/order in a particular set of facts may have the penal consequences but the question required to be adhered in the present case was as to whether the act of fixation of rate of compensation after observing of the legal formalities by itself constitute an offence of corruption and corrupt practice within meaning of Section 9(a)(vi). The presumption of guilt under Section 14 (d) of the NAB Ordinance in respect of an offence can only be raised after prosecution has established preliminary facts and succeeded in making out prima facie a reasonable case to charge an accused for an offence u/s 9(a)(vi) of the Ordinance. Therefore, notwithstanding the provision of Section 14 (d) of NAB Ordinance, this is settled law that unless the



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ATTESTED
EXAMINER
Peshawar High Court
29 SEP 2015

prosecution to the satisfaction of Court succeeds in discharging the initial burden of proving the allegation, no presumption of guilt can be raised to shift burden of disproving the allegation to the accused. Reference is made to (PLD 2001 SC 607). Reference is also made to (PLD 2008 SC 166) in case "Mansur-ul-Haque Vs Government of Pakistan".

Notwithstanding special provision of shifting of burden of proof, fundamental principle of law of criminal administration of justice that basic onus is always on prosecution to establish commission of offence is not changed--- Prosecution having advantage of provisions of Section 14(a) of National Accountability Ordinance, 1999, may not be under heavy burden to discharge onus of proving the charge as the Court, on discharge of initial burden of proving prima facie case by prosecution, raise a presumption of guilt---In the light of concept of criminal administration of justice, prosecution is not absolved of its duty to prove the charge beyond reasonable doubt under National Accountability Ordinance, 1999--- Burden of proof is only shifted on person facing charge if prosecution succeeds in making out a reasonable case by discharging initial burden of proving the charge."

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EXAMINER
 Registrar-IGS Tower
 29 SEP 2015

7. Keeping in views the above principle in mind it is to be seen whether accused as Land Acquisition Collector in connivance with acquitted accused Director and landowners committed the act of corruption and corrupt practice and misused his authority so as to gain benefit or favour for himself or for acquitted accused/land owner, in the form of excessive payment of compensation to the tune of Rs.8,21,18,119/- which resulted in the corresponding loss to national exchequer or he did exercise the powers in good faith without any consideration of illegal gain or undue benefit and the landowners have been compensated in accordance with law and no loss has been caused to Government exchequer.?

8. According to the record accused/appellant was appointed as Land Acquisition Collector for National Highway Authority for the acquisition of land for Peshawar Islamabad Motorway Project. He announced seven award bearing number 14,18,19,20,26 & 30 in between 30.08.1998 to 04.06.1999 pertaining to District Nowshera. In this case reference No.3/2002 was filed against 13 other accused with regard to award No.14 and 30 in which the rates varied from Rs.850/- to Rs.8000/- per Marla. Those accused were tried by

ATTESTED
EXAMINER
Peshawar High Court
29 SEP 2015

Accountability Court-I, Peshawar. After the conclusion of trial, the learned trial Court discussed the evidence and came to the conclusion that there was no collusion between the Land Acquisition Collector (appellant) and the beneficiaries and vide order dated 10.02.2004 the actual beneficiaries (landowners) and Director Abdul Ghafoor were acquitted by trial Court by holding.

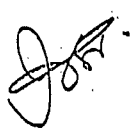
"The compensation was assessed by the absconding accused Abdul Munir Land Acquisition Collector with whom the alleged collusion of accused No.2 to 13 (landowners) is not proved on record. Except the I.O no other PW has deposed about the alleged collusion of accused No.2 to 13. The I.O's statement in this behalf is based on conjectures and surmises as he deposed that since the compensation was not awarded as per one year's average and so he presumed that the Land Acquisition Collector and landowners had collusion with each other. Any other worth reliance evidence does not support his above statement as such it is ruled out of consideration. The awards regarding built-up property are also not questioned in the Reference nor the recipients of compensation of such property are arrayed as accused in this case."

9. Admittedly no appeal has been filed against the judgment and order dated 10.02.2004

ATTESTED
 EXAMINER
 Peshawar High Court
 22 SEP 2015

and it has attained finality. Since present accused/appellant was not appeared before the Court, therefore he was declared absconder. In the above noted Judgment Award No.14 & 30 were discussed. The other five Award were Award No.18 of Mauza Banda Chail, Award No.19 of Banda Mula Killay, Award No.20 of Mauza Kheski Payan, Award No.21 of Mauza Kheski Bala and Award No.26 is regarding Mauza Behram Killay. All these Award relate to the land acquired for the proposed project which is in the vicinity of land acquired in Award No.14 & 30 and is situated between Nowshera and Charsadda. While acquitting the other accused the trial Court has specifically mentioned the market and potential value of the suit property and also discussed the evidence of PWs who admitted in their statements that the acquired property is situated in developed residential cum commercial locality being adjacent to Industrial Estate Locomoto Factory, Road and Abadi etc and observed "that the Land Acquisition Collector assessed the compensation amount of the property of accused No.2 to 13 keeping in view its location, potentialities and all other factures including its special adaptability for residential and commercial building. The rates at which the compensation has

53



ATTESTED

EXAMINER

Cashewar High Court

29 SEP 2015

been awarded to accused No.2 to 13 could not be declared as exorbitant." It was also observed that the Provincial Government had earlier acquired land measuring 178 Kanals for 07 Marlas Housing Scheme which was then transferred to NHA for Motorway Project for Rs.20 million which comes to Rs.1,12,359.55 per Kanal. The trial Court also noticed that vide various sale deeds one Kanal of land was sold for Rs.3,40,000/- in 1995. The trial Court discussed all these matters in its judgment. In the wake of these findings all the accused facing trial at that time were acquitted.

10. In the case of appellant when he was arrested, he was tried again because in addition to award No.14 & 30 he had announced 05 other Awards. Except the evidence of landowners the prosecution produced exactly the same evidence which was produced in the earlier trial. PW-1 Manzoor Ahmad, the custodian of record, produced certain record in respect of acquisition of land and issuance of different awards including the impugned awards. In cross examination he admitted the copies of the awards were sent to GM NHA, SMBR and others but the account department of NHA etc did not raise any objection in respect of the compensation amount. He also produced copies of

ATTESTED
EXAMINED
29 SEP 2015

Ijaz

56

the minutes of the meeting, chaired by concerned Minister with District Administration, held on different dates for the fixation of the price of land acquired through these awards and for delivery of possession to start the project which are ExpPW3/D2 to ExpPW3/D6. He also produced other record in respect of meetings held on different dates which are marked as ExpPW1/X-1 to ExpPW1/X-9. He admitted that on the basis of decision taken in the meeting held on 08.10.1998, the Land Acquisition Collector prepared reports for various kinds of land in District Charsadda and Nowshera. A meeting held on 08.10.1998 ExpPW1/X-6 Land Acquisition Collector was directed to carry out the necessary spade work for assessment of reasonable compensation for affected landowners as provided in the Land Acquisition Collector 1894 and he was also directed to submit his report as concerned landowners were not willing to deliver the possession of land till such time that they were to be paid in accordance with market rates. Accordingly he prepared report after assessing the rate and submitted his report to NHA on 14.10.199, Rehmanuddin Patwari Halqa Jalozai Malengar District Nowshera was examined as PW-3. In cross examination he produced revenue record ExpPW4/X-

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EXAMINER
Peshawar High Court

29 SEP 2015



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1 to ExPW4/X-8-1 and admitted according to revenue record Nowshera Mardan Road from north to south and a railway line is located adjacent to the acquired land. A Locomoto Factory is also adjacent to the acquired land. PW-6 Aurangzeb Assistant Commissioner Nowshera in 1998 was appointed as Local Commissioner to inspect the spot and determine the market value of the land under acquisition because owners were not prepared to accept the price offered by NHA. He visited the area, checked the record and met with effecties, but he could not prepared the report as he was transferred. In cross examination he admitted that he had seen a brick kiln in front of which there were some houses. In between the brick kiln and houses there was a metalled road. He also stated that a branch of United Bank is also situated in road adjacent to the acquired land and there is a distance of about 1 Kilometer between acquired land and Locomoto Factory. That industrial estate is also adjacent to the acquired property. He also admitted that the land of 07 Marla Housing Scheme was acquired in village Mera Kandari and the said property is adjacent to the land acquired for Motorway Project. Risalpur is at a distance of about 2/3 Kilometer from acquired land. He also admitted

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ATTESTED
EXAMINER
Punjab High Court
29 SEP 2015



that adjacent to the acquired land there is a railway line which is contiguous to the road and across the road there is Abadi. Prosecution also produced Patwari Halqas of other Mauzajat, but they could not prove that the amount determined by Collector is exorbitant. Qamar Zaman who had conducted investigation in the case was examined as PW-8. He stated that while announcing award the Land Acquisition Collector ignored the Ausat Yaksala price provided by Deputy Commissioner, Nowshera and announced award at enhanced rates. The accused also changed the classification/kind of some of the land in to commercial and residential area against law and fact and announced the award at enhanced rates causing huge loss to Government exchequer. In his cross examination he admitted that he had not inspected the property acquired. He further admitted that:-

"According to my knowledge compensation can be determined only on the basis of one year average of mutation and there is no other consideration for determination of compensation. I was told by Patwari Halqa and Tehsildar that the only consideration for determination of compensation is one year average."

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 EXAMINER
 29 SEP 2015



58

This admission reveals the ability and competency of the I.O who had conducted investigation in the case of award but without studying the relevant law i.e Land Acquisition Act 1894. Record further reveal that he did not conduct the investigation properly and failed to collect material record as he admitted that:-

"It is not in my knowledge as to whether prior to the acquisition any meeting had taken place in which Deputy Commission, Minister and other high officials participated and therefore, I have not taken in to possession any documents in this effect."

He also admitted that:-

"Since the compensation was not awarded on the basis of one year average, therefore, presumed that landowners and Land Acquisition Collector had entered into connivance and collusion, however, I have no other evidence to that effect. Since I had not visited the acquired land so, I cannot say as to whether there was a brick kiln, foundation walls for residential houses, metalled road and other built-up property in the acquired land."

11. It is also admitted fact that only 13 landowners were arrayed as accused. I.O admitted that landowners who received compensation less than 5 lacs were not arrayed as accused for the reasons that they were poor people. In his

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POSTHARVEST HIGH COURT

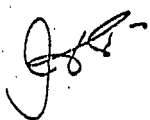
29 SEP 2015

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statement recorded u/s 342 Cr.P.C as well u/s 340 (2) Cr.P.C and 265(F) Cr.P.C accused had given the detail of the assessment of value of the disputed property. He stated "that the concerned owners were not willing to deliver the possession of land till such time they were to be paid in accordance with market rates. The whole of the area between these villages of Nowshera had not only commercial potential but were also in close vicinity of Locomoto Factory in Risalpur. All the area in total was commercial because in addition to this factory these are also in the vicinity of Risalpur Cantt: and the Industrial Estate. These lands are situated on the main Nowshera Mardan Road. There was a law and order situation, in the background of which various meetings were held to settle the matter and to persuade the landowners to deliver the possession peacefully." He has also given the reference of meeting held on 14.07.1998 under the chairmanship of DC Charsadda in which it was decided that the relevant rates should be fixed by the LAC i.e the accused, for acquisition purpose. These rates were also circulated through AC's letters dated 14.07.1998. He further stated that "I accordingly prepared the report after assessing the rates and submitted my report to NHA on 14.10.1998. There



ATTESTED
EXAMINER
29 SEP 2015

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was no objection on it and it was accepted because it reflected the assessment properly made." He was subjected to searching cross examination, but neither any question was asked from him with regard to the potential value of the suit property nor the proceedings including the meeting held under the chairmanship of Minister and Commissioner on the basis of which LAC assessed the value of the suit property. He has not been cross examined in respect of the fact that he had any connivance with the landowners. It is proved from record and this fact had also been discussed by the trial Court vide order dated 10.02.2004, while acquitting the landowners that there is not an iota on record to show that there was any connivance between the Collector and the landowners or the acquiring department. The land was acquired by the NHA, but the acquiring department never made any complaint and had no grievances regarding the compensation paid. But the NAB authority took the cognizance of the matter on some complaints and entrusted the matter to an investigating officer, who even did not know the ABC of the relevant law i.e. Land Acquisition Act, 1894.

12. According to record on the one hand the landowners were not paid compensation in

ATTESTED
EXAMINER
29 SEP 2015

accordance with law and on the other hand after a long period of about 04 years, they were implicated in the case for no reason and simply on the basis of whims of prosecution. The evidence on record shows that the actual rate of land per Marla at the time of acquisition was much more than the rate acquired. One of the landowners had filed reference/petition ExDA-X12 for the enhancement of compensation which was accepted and rate was enhanced. The statements of all the landowners and concerned Patwari Halqas also suggest that the price of land was much more than the market value assessed at the relevant time. That was why in the instant case D.C Nowshera and Charsadda had fixed the rate vide their letters dated 11.01.1998, 17.11.1995 and 25.11.1998 ExPW1/10-6 to ExPW1/10-9. In the meeting it was also decided that the value may be fixed at the rate of Rs.6000/- to Rs.8000/- per Marla.

13. From the perusal of Impugned judgment and order dated 25.07.2001 it reveals that the trial Court passed the order of conviction and sentence of appellant by holding that the rates do not tally with the rates mentioned in Ausat Yaksala. In this respect we deem it appropriate to reproduce para No.20 of the impugned judgment:-

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EXAMINER
PUNJAB HIGH COURT
27 SEP 2015

57

"These rates do not tally with the rates mentioned in Ausat Yaksalas available on pages 605 to 609 ExPW-4/1 to ExPW-4/6. These Yaksalas reveal that the rate of Barani land is Rs.127/38 per Marla, Nulchahi Rs.836/- per Marla and Makhloot Rs.5482/45 per Marla. So keeping in view the rates mentioned in Ausat Yaksala and Award there is gross different in it. No cogent reason has been given by the accused as to why he has ignored the rates mentioned in Ausat Yaksala and fixed the rates as on his own."

14. Here we are sorry to say that trial Court being an experience Judge had ignored the relevant provision of law including Section 23 of Land Acquisition Act and the Judgments of the superior Courts.

15. It is now settled principle of law that while assessing/determining the compensation of acquired land the one year average is not the only yardstick. The Collector has not only to consider the market value for the land in question but other relevant factors such as location, potentiality of the acquired land have to be considered. In this respect reference may be made to (2009 SCMR 771) "Land Acquisition Collector, Abbottabad and others versus Gohar ur Rehman Abbasi" wherein it is held;-

APPROVED
EXAMINER
2 SEP 2015

"At the time of passing of award, potential value of the property had to be considered in addition to market value of the land. Average sales of last one year was not conclusive for determination of market value of land and while assessing the market value of the land, its location and potentiality had to be considered".

In case 'Malik Aman and others versus Land Acquisition Collector' (PLD 1988 SC 32) It is held;-

"Factors for determination of market value of land are not, therefore, restricted only to time of issuance of Notification or any period prior to it but can also relate to period in future and it is for this reason that "potential value" of land i.e. the use to which it can be put in future has in a large number of cases been held to be a relevant factor - - Fact that long period had elapsed between issuance of Notification and announcement of Award coupled with fact that during that period prices of land in question land risen sharply, held, was a factor which ought to and should have been taken into account while determining value of land for the purpose of compensating the owner".

16. It is repeatedly been held by the superior Court that in acquisition case the owner of the acquired land should be paid compensation and not the price because there is different between price

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ATTESTED
EXAMINER
Peshawar High Court
29 SEP 2015

and compensation while assessing the award compensation on the basis of one year average is not sole criteria in present trend of extraordinary hike of landed property. The land is acquired in the interest of General Public expenses on the basis of sacrifice of an individual which requires to adequately compensating the individual in extraordinary manner and the compensation should be fixed in the light of criteria of a willing vendor and that of a needy vendee. Reference may also be made to (PLD 2010 SC 719) "Land Acquisition Collector & others Vs Mst: Iqbal Begum & others". It was on the basis of this principle that the trial Court vide judgment and order dated 10.02.2004 acquitted the landowners.

17. One of the allegations of the prosecution is that classification of the acquired land was changed. This allegation is also not correct because it is admitted by PWs that there were houses, brick kiln and other built-up property in the acquired land. Accused in his statement u/s 342, 340(2) and u/s 265(F) Cr. P.C. had given the detail of nature/character of the property. Separate awards were issued in respect of build-up property and the amount was paid. These awards were never objected by NAB.

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ATTESTED
 EXAMINER
 Registrar High Court
 29 SEP 2015

65

18. In the light of facts and circumstances of the present case and the evidence brought on record, we have not been able to find out the basic elements of an offence of corruption and corrupt practice in the transaction in question within the meaning of Section 9 (a) (vi) read with Section 10(a) of NAB Ordinance, 1999, which provides as under:-

"Section 9(a):- A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices.

(vi) If he misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempts to render or willfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority."

"Section 10(a):- A holder of public office or any other person who commits the offence of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which may extend to 14 years and with fine and such of the assets pecuniary resources of such holder of public office or person, as are found to be disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamindars shall be

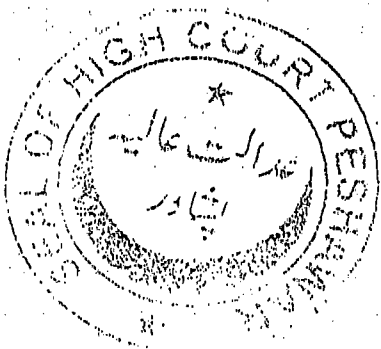
REGISTERED
EXAMINER
17 SEP 2015

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forfeited to the appropriate Government or the concerned bank or financial institution as the case may be."

19. The plain reading of the above provision would show that without discharge of initial burden by the prosecution, the presumption of guilt cannot be raised and trial of a person on vague allegation is misuse of process of law and Court. The prosecution must discharge its duty fairly, justly and in accordance with law and since any lapse of prosecuting agency in respect of the right and liabilities of a person facing prosecution, is not condonable, therefore, the Courts must be vigilant about the right of such a person to save him from incarceration of unjustified prosecution at the cost of his honour and reputation.

20. In circumstances to what has been discussed above, the present appeal is allowed. The conviction and sentence awarded to appellant is set-aside and he is acquitted of the charge in the reference. He is on bail, therefore his sureties are discharged from the liabilities of ball bonds.



sd/- Nazim Ahmad Khan - CJ
sd/- Jashid Qureshi

CHIEF JUSTICE

JUDGE

Announced.

22/9/2015

ATTESTED

EXAMINER
Cashwar High Court

29 SEP 2015

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22/9/15

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE FAISAL ARAB

CRIMINAL PETITION NO. 859 OF 2015

(On appeal against the judgment dated 22.9.2015
passed by the Peshawar High Court, Peshawar in
Criminal Appeal No. 9-P/2007)

Chairman NAB, Islamabad

... Petitioner

VERSUS

Abdul Munir

... Respondent

For the Petitioner: Syed Ali Imran, Special Prosecutor NAB
Mr. Tariq Aziz, AOR

For the Respondent: Mr. Altaf Ahmed, ASC
Mr. Muhammad Ajmal Khan, AOR

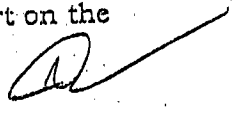
Date of Hearing: 26.01.2017

ORDER

DOST MUHAMMAD KHAN, J.- With the assistance of learned ASCs, we have gone through this petition and the relevant material attached there with, which has been filed against the judgment of the Peshawar High Court, Peshawar dated 22.9.2015 given in Criminal Appeal No. 9-P/2007 whereby the accused-respondent was acquitted and the Trial Court's judgment was set aside.

2. The reasons given by the High Court in its judgment are based on sound principle of law laid down by this Court both on civil and criminal sides in cases of this nature and because the acquiring department has not shown any grievance against the fixation and payment of compensation to the affectees of the acquired land nor the matter was taken to the referee court on the

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Court Associate
Supreme Court of Pakistan
Islamabad

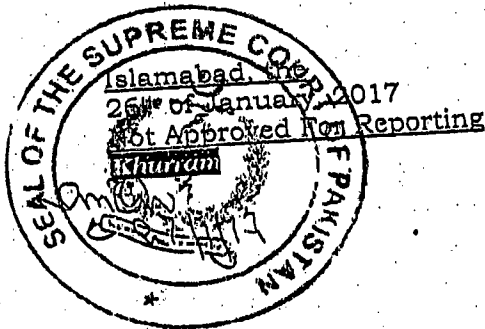
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reference, thus we do not understand that why the NAB has laid hands on this case and why it is chasing it like a chasing shadow when the NAB has failed to provide evidence directly connecting the accused-respondent that he had indulged in corruption and corrupt practices and received pecuniary benefits. Hence, this petition is found bereft of any legal ground and is dismissed, leave is declined.

Sd/- Dost Muhammad Khan ,J
Sd/- Qazi Faez Isa,J
Sd/- Faisal Arab,J

Certified to be True Copy

[Signature]
7/2/17
Court Associate
Supreme Court of Pakistan
Islamabad



GR No: 49 P/17 Civil/Criminal
Date of Presentation: 4-2-17
No of Writs: 6
No of Parties: 6
Requ: 3
Copy Fee: 8
Court Fee: 7/2/17
Date of delivery: 14/2/17
Compared by//Prepared by: [Signature]
Received by: [Signature]

To

The Chief Secretary
Govt. of KPK, Peshawar



9
H

Subject: Appeal against office order No. SOE-II (ED) 2 (381)/92, dated: 04/03/2003 of the Secretary, Govt. of KPK, Estt. Deptt. Peshawar, whereby appellant was removed from service retrospectively.

Respected Sir,

- 1) That in the year 1980, appellant joined service as Inspector Income Tax. He was appointed as Tehsildar by the Govt. of KPK in the year, 1982 on the recommendations of then, NWFP Public Service Commission and was then promoted as Officer of PCS Executive Group in the year, 1992. He was deputed to the National Highway Authority as Land Acquisition Collector on 15/4/1998.
- 2) That family enmity was cropped up causing imminent danger to the life, so appellant was constrained to move away along with his family in exile for sometime. On the aforesaid cause, Establishment Deptt. Initiated disciplinary proceedings against him under double enactment of Removal from service (Special Powers) Ordinance, 2000 and Govt. of KPK, Civil Servant (E&D) Rules, 1973 and was removed from service vide order dated: 04/03/2003 in his absence.
- 3) That enmity matter was patched up with the enemies and after releasing the burden, appellant preferred departmental appeal to the authority on 17/03/2009, followed by subsequent representation but the appeal was rejected on 07/04/2009.
- 4) That thereafter appellant submitted appeal No. 729/09 on 04/05/2009 before the Honorable Service Tribunal Peshawar, which was cropped up and then on 13/10/09, the same was dismissed for no legal reason.
- 5) That on 17/04/2006, appellant surrendered before the NAB authorities and after completing the trial before the NAB court,

appellant was convicted and sentenced to 4 years R.I and fine of Rs. 8,25,00,000/- or in default to suffer S.I for 2 years vide judgment, dated: 25/07/2007.

- 6) That on 01/08/2007, appellant filed appeal before the Peshawar High Court Peshawar which was, after thorough probe, accepted vide judgment dated: 22/09/2015 by setting aside the conviction and sentence, meaning thereby that appellant was declared as innocent.

Hence this departmental appeal, inter alia, on the following grounds.

GROUNDS

- a) That appellant has on his credit more than 21 years unblemished service.
- b) That due to enmity, appellant along with his family members exiled from the scene which was culminated into his removal from service under Removal from Service (Special Powers) Ordinance, 2000 and Govt. of KPK Civil Servant (E&D) Rules, 1973.
- c) That appellant was dealt with under two different enactments SRO 2000, and E&D Rules, 1973 and the said enactment has total different mechanism of the case before the appellate authority as well as the Service Tribunal. Such double jeopardy was declared null and void in Plethora of the judgments by the Apex Supreme Court of Pakistan, having different mechanism, so the impugned order was total in disregard of law.
- d) That the charge of corruption leveled against appellant was not proved in the competent court of law, that is why, he was acquitted from the baseless charges of corruption by the competent court of law.
- e) That filing appeal before the Service Tribunal Prior to his case pending disposal before the High Court was futile exercise which has no binding effect upon the instant case of appellant.
- f) That the impugned order was given effect retrospectively while under the law, no order could be effected with retrospective effect.

On this score alone, the impugned order becomes null and void in the eyes of law.

- g) That when appellant earned acquittal from the competent court of law then the former proceedings carried out against him has no legal value in the eyes of law.
- h) That the Service Tribunal also fell in legal error as criminal appeal was pending disposal before the legal forums and the Tribunal should have waited for the final result of the criminal case.
- i) That the Honorable Tribunal accepted such like appeals of various appellants by entering into Plea bargaining with the NAB namely, Sher Adam Khan, Electrical Inspector, Zahid Arif now Secretary C&W and Hizbullah, etc. etc. and even appellant has made no Plea bargain with the NAB, so the case of the appellant was more strong than the cases of the afore said personnel.
- j) That the Service Tribunal reinstated them with all back benefits but that judgments were upheld by the Apex Supreme Court of Pakistan. Some of them are availing/enjoying the fruits of their services in shape of performing duties or in shape of pensionary benefits.
- k) That no inquiry either per the mandate of RSO or Rules was conducted, so the impugned order was ab-initio void.

It is, therefore, humbly requested that order dated: 04/03/2003 of the Secretary, Govt. of KPK, Estt. Deptt, Peshawar be set aside and appellant be reinstated in service with all back benefits. And as by now appellant has crossed age of superannuation, so he be awarded pensionary/back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Appellant

Dated: 7/10/2015

Abdul Munir Khan
S/O Jehangir Khan
R/O H.No. 103B St. 5 Sector K2
Phase 3 Hayatabad Peshawar

K
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H
Annex
72

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1436 /2015

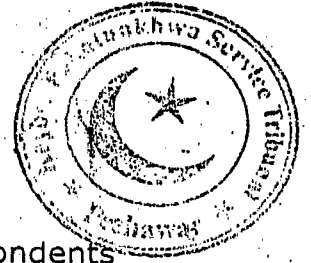
Abdul Munir Khan S/o Jehangir Khan,
R/o House No. 103-B, St: No. 5, Sector K2,
Phase III, Hayatabad, Peshawar, Ex - Extra

W.P. Province
Service Tribunal
Dary No. 1548
dated 31-12-2015

Assistant Commissioner, Peshawar. Appellant

Versus

1. Secretary, Govt. of KP, Establishment
Department, Peshawar.
2. Chief Secretary, Govt. of KP; Peshawar. Respondents



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**APPEAL U/S 4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST OFFICE ORDER NO.
SOE-II(ED)2(381)/92, DATED 30.12.2015 OF
R. NO. 1, WHEREBY REPRESENTATION DATED
07.10.2015 OF APPELLANT WAS
FILED/REGRETTEED FOR NO LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That in the year 1980, appellant joined service as Inspector Income Tax. He was appointed as Tehsildar by the Govt. of KP in the year, 1982 on the recommendations of the then, NWFP Public Service Commission and was then promoted as Officer of PCS Executive Group in the year, 1992. He was deputed to the National Highway Authority as Land Acquisition Collector on 15.04.1998.

That family enmity was developed causing imminent danger to the life, so appellant was constrained to move away along with his family in exile for some time. On the aforesaid cause, Establishment Department initiated disciplinary proceedings against him under double

ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Signature]
31/12/15

enactment of Removal from Service (Special Powers) Ordinance, 2000 and Govt. of KP, Civil Servant (E&D) Rules, 1973 and was removed from service vide order dated 04.03.2003 in his absence. (Copy as annex "A")

3. That on 17.04.2006, appellant surrendered before NAB authorities and after conclusion of the trial before the NAB court, appellant was convicted and sentenced to 4 years R.I and fine of Rs. 8,25,00,000/- or in default to suffer S.I for 2 years vide judgment dated 25.07.2007. (Copy as annex "B")
4. That on 01.08.2007, appellant preferred appeal to the Peshawar High Court, Peshawar against the judgment of the Accountability Court. (Copy as annex "C")
5. That enmity matter was patched up with the enemies and after releasing the burden, appellant preferred departmental appeal to the authority on 17.03.2009 which was rejected on 07.04.2009. (Copies as annex "D" & "E")
6. That thereafter appellant submitted appeal No. 729/09 on 04.05.2009 before the Hon'ble Service Tribunal Peshawar, which was dismissed on 13.10.2009 for no legal reason. (Copies as annex "F" & "G")
7. That CPLA No. 2-P/2009 was filed before the apex Court against the judgment of the Service Tribunal, Peshawar for reinstatement in service but leave to appeal was declined on 11.03.2010 as at the same time the conviction of the Accountability Court was in field. (Copies as annex "H" & "I")
8. That on 22.09.2015, appeal filed before the Hon'ble Peshawar High Court, Peshawar on 01.08.2007 was accepted by setting aside conviction, sentence and fine. (Copy as annex "J")
9. That after the finalizing the matter of the criminal case, on 07.10.2015, appellant submitted departmental appeal

before the authority for reinstatement in service with all back benefits which was rejected on 30.12.2015. (Copies as annex "K" & "L")

Hence this appeal, inter alia, on the following grounds:-

GRUNDS:

- a. That appellant at his credit more than 21 years unblemished service record.
- b. That due to enmity, appellant along with his family members exiled from the scene which was culminated into his removal from service under Removal from Service (Special Powers) Ordinance, 2000 and Govt. of KP Civil Servant (E&D) Rules, 1973.
- c. That appellant was dealt with under two different enactments, SRO 2000 and E&D Rules, 1973 and the said enactment has total different mechanism of the case before the appellate authority as well as the Service Tribunal. Such double jeopardy was declared null and void in plethora of judgments by the apex Supreme Court of Pakistan, having different mechanism, so the impugned order was total in disregard of law.
- d. That the charge of corruption leveled against appellant was not proved in the competent court of law, that is why, he was acquitted from the baseless charges of corruption.
- e. That filing of appeal before the Service Tribunal prior to his acquittal from the criminal case was futile exercise which has no binding effect upon the instant case of appellant.
- f. That the impugned order was given effect retrospectively while under the law no order could be effected with retrospective effect. On this score alone, the impugned order is null and void in the eyes of law.

ATTESTED

[Signature]
 Director
 Government of Punjab
 Lahore

- (75)
- g. That when appellant earned acquittal from the competent court of law, then the former proceedings carried out against him were of no legal effect.
 - h. That the Service Tribunal also fell in legal error as criminal appeal was pending disposal before the legal forums and the Tribunal should have waited for the final result of the criminal case.
 - i. That the Hon'ble Tribunal accepted such like appeals of various appellants by entering into plea bargain with the NAB namely, Sher Adam Khan, Electrical Inspector, Zahid Arif now Secretary C&W and Hizbullah, etc. and even appellant has made no plea bargain with the NAB, so the case of the appellant was more strong than the cases of the aforesaid persons.
 - j. That the Service Tribunal reinstated them with all back benefits which judgments were upheld by the apex Supreme Court of Pakistan. Some of them are availing/enjoying the fruits of their services in shape of performing duties or in shape of pensionary benefits.
 - k. That no inquiry either per the mandate of RSO or Rules was conducted nor order dated 30.12.2015 is supported by any reason, so the impugned order was ab-initio-void.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 30.12.2015 or 04.03.2003 of R. No. 1, be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in the circumstances of the case.

[Signature]
Appellant

Through *[Signature]*
Saadullah Khan Marwat

[Signature]
Arbab Saif-ul-Kamal

[Signature]
Miss Robina Naz,
Advocates.

Dated: 31.12.2015

[Signature]
Certified to be true copy
Miss Robina Naz &
Arbab Saif-ul-Kamal,
Advocates,
Peshawar

L

(76) Annex 2

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

SERVICE APPEAL NO. 1436/2015

Date of institution ... 31.12.2015

Date of judgment ... 24.12.2018



Abdul Munir Khan S/o Jehangir Khan,
R/o House No. 103-B, Street No. 5, Sector K2,
Phase-III Hayatabad, Peshawar.
Ex-Extra Assistant Commissioner, Peshawar

... (Appellant)

VERSUS

1. Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
 2. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
- ... (Respondents)

**APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST OFFICE ORDER NO. SOE-II(ED)2(381)/92 DATED
30.12.2015 OF RESPONDENT NO. 1, WHEREBY
REPRESENTATION DATED 07.10.2015 OF APPELLANT WAS
FILED/REGRETTEED FOR NO LEGAL REASON.**

Mr. Arbab Saif-ul-Kamal, Advocate.

Mr. Riaz Ahmad Paindakhel, Assistant Advocate General

.. For appellant.
.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Appellant

General for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving as Extra Assistant Commissioner, Peshawar. He was deputed to the National Highway Authority as Land Acquisition Collector on 15.04.1998. The

24/12/2018

MC Amin

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

appellant was imposed major penalty of removal from service by the competent authority vide order dated 04.03.2003 with effect from 17.01.2002 on the allegation of absence from duty being involved in corruption cases. The appellant filed departmental appeal on 17.03.2009 which was rejected on 07.04.2009 being time barred therefore, the appellant filed service appeal on 04.05.2009. The service appeal of the appellant was dismissed by this Tribunal vide detailed judgment dated 13.10.2009. The appellant also challenged the judgment of this Tribunal dated 13.10.2009 before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan also declined the leave to appeal vide judgment dated 11.03.2010. It is also pertinent to mention here that the appellant was convicted by the Accountability Court NWFP, Peshawar in reference No. 8/2007 for the offence of corruption and corrupt practices punishable under section 9/10 of National Accountability Ordinance, 1999 and sentenced to rigorous imprisonment for four years and to pay a fine of Rs. 8,25,00,000/- or in default to undergo for two years S.I, the benefits of section 382-B Cr.P.C has also been extended vide judgment dated 25.07.2007. The appellant challenged that aforesaid judgment of the Accountability Court Peshawar in the worthy Peshawar High Court and the worthy Peshawar High Court vide detailed judgment dated 22.09.2015 acquitted the appellant from the aforesaid case. The appellant again filed departmental appeal on 07.10.2015 against his removal order which was rejected on 30.12.2015 hence the present service appeal on 31.12.2015.

3. Respondents were summoned who contested the appeal by filing of

ATTESTED

written reply/comments.

4. Learned counsel for the appellant contended that the absence of the appellant was not intentional but the appellant was involved in corruption cases by the NAIB authority. It was further contended that the Accountability Court

M. Aslam
24/12/2018

[Signature]
Service Tribunal,
Peshawar



78

Peshawar convicted the appellant but the appellant filed appeal before the worthy Peshawar High Court against the judgment of the Accountability Court and the worthy Peshawar High Court accepted the appeal of the appellant and acquitted the appellant from the charges leveled against him vide detailed judgment dated 22.09.2015. It was further contended that after his acquittal by the worthy Peshawar High Court, the appellant filed departmental appeal but the same was rejected hence, the present service appeal. It was further contended that since the appellant was acquitted by the worthy Peshawar High Court therefore, the removal order of the appellant was illegal and liable to be set-aside and prayed for acceptance of appeal with all back benefits.

5. On the other hand, learned Assistant advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was removed from service vide order dated 04.03.2003 with effect from 17.01.2002 by the competent authority on the allegation of absence from duty being involved in corruption cases. It was further contended that the appellant submitted departmental appeal against the removal order on 17.03.2009 which was badly time barred and the same was rejected on 07.04.2009 being time barred. It was further contended that the appellant also filed service appeal before this Tribunal and this Tribunal also dismissed the appeal of the appellant vide detailed judgment dated 13.10.2009. It was further contended that the appellant also challenged the judgment of this Tribunal dated 13.10.2009 before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan has also maintained the judgment of this Tribunal and the petition was dismissed and leave to appeal was declined vide detailed judgment dated 11.03.2010. It was further contended that the appellant was also convicted by the Accountability Court Peshawar but on his acquittal by the worthy Peshawar High Court, he again filed departmental appeal as well

M. J. Khan
24.12.2018

ATTESTED

[Signature]

24.12.2018



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as service appeal. It was further contended that since this Tribunal has already dismissed the appeal of the appellant vide detailed judgment dated 13.10.2009 and the august Supreme Court of Pakistan has also maintained the judgment of this Tribunal vide judgment dated 11.03.2010 therefore, it was contended that the present service appeal is not maintainable and is hit under rule 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was further contended that the first departmental appeal of the appellant was also time barred therefore, prayed for dismissal of appeal.

6 Perusal of the record reveals that the appellant was imposed major penalty of removal from service by the competent authority vide order dated 04.03.2003 with effect from 17.01.2002 on the allegation of absence from duty being involved in corruption cases. The record further reveals that the appellant filed departmental appeal against the impugned order on 17.03.2009 which was badly time barred and the departmental appeal was also rejected by the departmental authority vide order dated 07.04.2009 being time barred. The appellant filed service appeal before this Tribunal and the service appeal of the appellant was also dismissed by this Tribunal vide detailed judgment dated 13.10.2009. The appellant also challenged the judgment of this Tribunal before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan vide detailed judgment dated 11.03.2010 maintained the judgment of this Tribunal and petition of the appellant was dismissed and leave to appeal was declined. The record further reveals that the appellant was convicted by the Accountability Court Peshawar and the appellant challenged the same before the worthy Peshawar High Court and the worthy Peshawar High Court set-aside the judgment of Accountability Court Peshawar and acquitted the appellant vide detailed judgment dated 22.09.2015. Though the appellant again filed departmental appeal after his acquittal and thereafter the service appeal before

M. Amin
24.12.2015

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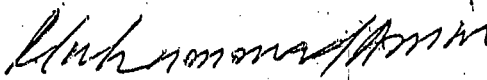



this Tribunal but in the first round of litigation the appellant was removed from service vide order dated 04.03.2003 and he filed departmental appeal on 17.03.2009 after a delay of about six years which was also rejected vide order dated 07.04.2009 being time barred. Moreover, the service appeal of the appellant was also dismissed by this Tribunal vide judgment dated 13.10.2009 and the appellant also challenged the same before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan also maintained the judgment of this Tribunal and leave to appeal was declined vide detailed judgment dated 11.03.2010. Therefore, we are of the considered view that the present service appeal is not maintainable being re-judicata and is hit under Rule-23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. Hence, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs.

File be consigned to the record room.

ANNOUNCED
24.12.2018


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


copy
Tribunal,
Peshawar

Date of Presentation of Application 24-12-18
 Number of Copies 2400
 Copying Fee 14
 Urgent _____
 Total 14
 Name of Applicant [Signature]
 Date of Completion of Copy 24-1-19
 Date of Delivery of Copy 24-1-19

(89)

Peshawar remained absent for 7 years in 302 case and after acquittal from court, he was honorably re instated by secretary P&D department with all back benefits (copy attached).

Some other entered into Plea Bargaining with the NAB namely, Sher Adam Khan, Electrical inspector, Zahid Arif Ex Secretary C&W and Hizbullah, etc. and even appellant has made no Plea bargain with the afore said personnel.

- j) That the Service Tribunal reinstated them with all back benefits but that judgments were upheld by the Apex Supreme Court of Pakistan. Some of them are availing/enjoying the fruits of their services in shape of performing duties or in shape of pensionery benefits.
- k) Under the principle/rule of consistency, the benefits of such decision be extended to other civil servant also who were not party to the suit.
- l) That no inquiry either per the mandate of RSO or Rules was conducted, so the impugned order was ab-initio void.
- m) The grant of permission by the honourable Supreme Court Of Pakistan to approach Provincial Government, the Jurisdiction / Order of the Service Tribunal has lost significance.

It is therefore, humbly requested that order dated: 04/03/2003 of the Secretary, Govt. of KPK, Estt. Deptt, Peshawar be set aside and appellant be reinstated in service with all back benefits. And as by now appellant has crossed age of superannuation, so he be awarded Pensionery/back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Appellant
Your obediently,

Dated: 13/06/2022
Contact No. 0342-9780424

Abdul Munir Khan
S/O Jehangir Khan
Village and post office Bahadri Tehsil and
District Dera Ismail Khan

Office

90 Annex to
The Secretary Establishment - L
Govt of KPK Peshawar

PS/Secy E&AD KP
Diary No. 8411
FTS No. _____
Date. 20.10.22

Order No. SCE-II (ED)
of the Secretary,
dated 4.3.2022
Deptt. Peshawar whereby appeal
is removed from service retrospective.

Respected Sir,

I am humbly stated that a
grant of permission by the August Supreme
to seek remedy with Prov Govt, I had submit
the above mentioned appeal to the Honbl. Chief
Minister KPK which was sent to your
office for necessary action. I have been wait
for the decision of my appeal. Now I have
come to know that my appeal has been file
and not yet received in this respect. But
I have not received the copy of the said
notification. Kindly issue me the copy of the
required notification. Thank you.

Dated 20.10.22

Abdul Manir Khan
Yours Obedient

M No 229730424

The Secretary

Govt of KPK Peshawar

Subject: Appeal against office order No SOE-II (ED) (381)/92 dated 4.3.2003 of the Secretary of KPK Esstt Deptt. Peshawar whereby appeal was removed from service retrospective

Respected Sir,

It is humbly stated that a grant of permission by the August Supreme to seek remedy with Prov. Govt, I had submitted appeal to the Honbl. Ch. Minister KPK which was sent to your office for necessary action. I have been waiting for the outcome of my appeal. Now I have come to know that my appeal has been finalized and notification issued in this respect. I have not received the copy of the said notification. Kindly issue me the copy of the notification.

Thank you

Dated 20.10.2022

Mob. No 03429780424

Abdul Munir

①

BEFORE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

⑧1

Annex J

C.P.L.A.No. 673 /2019

Abdul Munir Khan S/o Jehangir Khan
R/o House No.103-B, St. No.5, Sector K-2
Phase-III, Hayatabad, Peshawar,
Ex-Extra Assistant Commissioner, Peshawar

.....Petitioner

Versus

- 1) Secretary, Govt. of KP, Establishment Department,
Peshawar.
- 2) Chief Secretary, Govt. of KP, Peshawar.

.....Respondents

**CIVIL PETITION FOR LEAVE TO APPEAL
UNDER ARTICLE 212(2) OF THE
CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973 AGAINST THE
IMPUGNED JUDGMENT OF THE
HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR DATED
24.12.2018 PASSED IN SERVICE APPEAL
NO.1436/2015**

Respectfully Sheweth

I. THE POINTS OF LAW AND GROUNDS INTER-ALIA OF
GENERAL PUBLIC IMPORTANCE, WHICH FALL FOR
DETERMINATION OF THIS AUGUST COURT.

- 1) Whether the impugned judgment dated 24.12.2018
passed by Hon'ble Khyber Pakhtunkhwa Service

Tribunal, Peshawar, is not against law, facts and record of the case, hence untenable?

- 2) Whether the appraisal of evidence and the findings of the Hon'ble Tribunal are not arbitrary, suffers from misreading and non-reading of evidence, misconstruction of materials available on record, misconception of law and legal infirmity?
- 3) Whether the petitioner has been dealt in accordance with law?
- 4) Whether the petitioner has not been condemned unheard?
- 5) Whether major penalty can be awarded mere on the ground of absence from duty, when absence period is properly explained?
- 6) Whether it is not evident on record that, absence of petitioner was not willful nor deliberate, but was due to enmity, NAB Harassment and fear, which forced the petitioner and his family to exile from the scene?
- 7) Whether petitioner was not dealt with under two different enactment, SRO 2000 and E&D Rules, 1973 and the said enactment has total different mechanism of the case before the petitioner authority as well as the Service Tribunal, such double jeopardy was declared null and void in plethora of judgments by the apex Supreme Court of Pakistan, having different mechanism, so the impugned order was total in disregard of law?
- 8) Whether the charges of corruption leveled against petitioner were proved or whether petitioner was not

(3)

(83)

acquitted honorably from the baseless charges of corruption?

- 9) Whether the impugned order was not given effect retrospectively, which is against the law on the subject, because as per law no order could be effected with retrospective effect?
- 10) Whether the Hon'ble Service Tribunal has not committed gross illegality and irregularity while dismissing the appeal of the petitioner?

II. THE STATEMENT OF FACTS GIVING RISE TO THE LAW POINTS ARE AS UNDER:

- 1) That in the year 1980, petitioner joined service as Inspector Income Tax and was appointed as Tehsildar by the Govt. of KPK in the year 1982 on the recommendations of the then NWFP Public Service Commissions and was then promoted as Officer of PSC Executive Group in the year 1992.
- 2) That petitioner was thereafter deputed to the National Highway Authority as Land Acquisition Collector on 15.04.1998.
- 3) That family enmity was developed causing imminent danger to the life, so petitioner was constrained to move away alongwith his family in exile for some time. Alongside NAB, harassment, fear also forced the applicant to go in exile, on the aforesaid causes, Establishment Department initiated disciplinary proceedings against him under double enactment of Removal from Service (Special Powers) Ordinance, 2002 and Govt. of KP, Civil Servant (E&D) Rules, 1973 and was removed from service vide order dated 04.03.2003 in his absence.

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- 4) That on 17.04.2006, petitioner surrendered before the NAB authorities and after conclusion of the trial before the NAB Court, petitioner was convicted and sentenced for 4 years R.I with a fine of Rs.8,25,00,000/- or in default to suffer SI for 2 years vide judgment dated 25.07.2007.
- 5) That on 01.08.2007, petitioner preferred appeal to the hon'ble High Court against his conviction.
- 6) That enmity was patched-up with the enemies and getting bail from august High court in 2009 after releasing the burden, petitioner preferred departmental appeal to the authority on 17.03.2009, which was rejected on 07.04.2009.
- 7) That thereafter, petitioner submitted appeal No.729/09 on 04.05.2009 before the hon'ble Service Tribunal Peshawar, which was dismissed on 13.10.2009 for no legal reason.
- 8) That CPLA NO.2-P/09 was filed before this august Court against the judgment of the hon'ble Service Tribunal, Peshawar for reinstatement in service, but leave to appeal was declined on 11.03.2010 as at the same time conviction of the Accountability Court was in field.
- 9) That on 22.09.2015, appeal filed by petitioner before the hon'ble Peshawar High Court, Peshawar on 01.08.2007 was accepted by setting aside the conviction and sentence awarded to petitioner.
- 10) That the NAB Peshawar filed leave to appeal before the august Supreme Court of Pakistan in 2015 vide Cr.PLA.No.859/2015 ,which was rejected by hon'ble Bench of Supreme Court on 26.01.2017 confirming release and acquittal of the petitioner.

(5)

(BS)

- 11) That after finalizing the matter of the criminal case, on 22.09.2015, petitioner submitted departmental appeal before the concerned authority, which was rejected on 24.12.2018
- 12) That being aggrieved of the order dated 30.12.2015 the petitioner filed Service Appeal No.1436/2015 before Hon'ble KPK Service Tribunal, which came up for hearing on 24.12.2018.
- 13) That the Hon'ble Khyber Pakhtunkhwa, Service Tribunal, Peshawar vide its judgment dated 24.12.2018 dismissed the Service Appeal No.1436/2015 filed by petitioner.
- 14) That being dissatisfied with the judgment dated 24.12.2018 the petitioner now seeks leave of this august court on the law points and grounds as set-out in part "A" above.

It is, therefore, humbly prayed that leave to appeal against the impugned judgment dated 24.12.2018 passed by Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.1436/2015 may graciously be granted.

Syed Rifaqat Hussain Shah
Advocate-on-Record
Supreme Court of Pakistan

NOTE:

Certified that no such petition has been filed earlier by the petitioners against the judgment dated 24.12.2018 passed by KPK Service Tribunal, Peshawar.

Advocate-on-Record

Note:

Mr. Sardar Ali Raza ASC (Peshawar) will appear before the Court at the time of arguments

M

86

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL, CJ
MRS. JUSTICE AYESHA A. MALIK

CP No.673/2019
(Against the judgment dated 24.12.2018 passed in
Service Appeal No.1436/2015)

Abdul Munir Khan ...Petitioner(s)

Versus

Secretary, Government of KP, Establishment ...Respondent(s)
Department, Peshawar & another

For the Petitioner(s) : Mr. Salahuddin Malik ASC alongwith
petitioner in person

For the Respondent(s) : NR

Date of Hearing : 28.03.2022

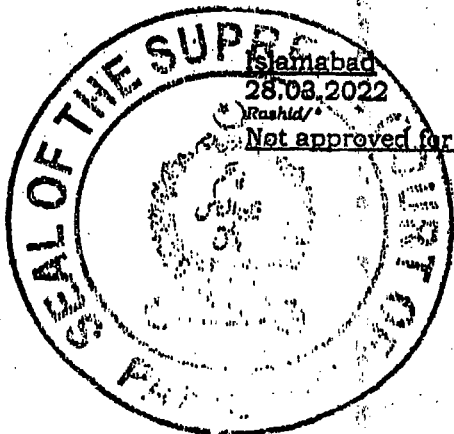
ORDER

UMAR ATA BANDIAL, CJ: - The learned counsel for
the petitioner does not press this petition against the judgment
dated 24.12.2018 passed by KP Service Tribunal, Peshawar in
order that the petitioner may seek some remedy before Provincial
Government. Request allowed. Dismissed as not pressed.

Sd/-CJ
Sd/-J

Scanned to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



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16/5/22

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N

K

To

The Chief Minister,
Govt. of KPK, Peshawar

(87)

Annex K

Subject: Appeal against office order No. SOE-II (ED) 2 (381)/92, dated: 04/03/2003 of the Secretary, Govt. of KPK, Estt. Deptt. Peshawar, whereby appellant was removed from service retrospectively

Respected Sir,

1. That the appellant is approaching your honor through instant departmental appeal after permission of the honorable Supreme Court granted by order dated: 28/03/2022 in civil petition No. 673/2019 (copy attached).
2. That in the year 1980, appellant joined service as Inspector Income Tax. He was appointed as Tehsildar by the Govt. of KPK, in the year 1982 on the recommendations of the then, NWFP Public Service Commission and was then promoted as Officer of PCS Executive Group in the year 1992. He was sanctioned move over BPS 18 in year 2001. He was deputed to National Highway Authority as Land Acquisition collector on 15/04/1998.
3. That family enmity was cropped up causing imminent danger to the life coupled with false NAB arrest warrant issued in 2002, appellant was constrained to move away along with his family. On the aforesaid cause, Establishment Deptt. Initiated disciplinary proceeding against him under double enactment of Removal from service (Special Powers) Ordinance, 2000 and Govt. of KPK, Civil Servant (E&D) Rules, 1973 and was removed from service vide order dated: 04/03/2003 in his absence. That the enmity was patched up and the appellant surrendered voluntarily to NAB authorities in 2006. The appellant remained in custody, was convicted to four years R.I with some fine and in lieu of nonpayment of fine, the appellant to undergo 2 year simple S.I. Appellant was granted bail on 8-2-2009, however the appellant preferred to undergo punishment including 2 years S.I in lieu of fine and was released thereafter on 19/02/2009. The appellant then filed Departmental appeal on 17/03/2009 which was rejected on 7/04/2009.
4. That the appellant then filed service appeal No. 729/09 dated: 4/5/2009 which was dismissed on 13/10/2009 by the honorable service tribunal NWFP Peshawar, where after he filed CP No. 2-P/2010 Date: 11/03/2010 which was also dismissed.
5. That the Appellant was Acquitted of the NAB reference by the Peshawar High Court on 22/09/2015 where after the same judgment was upheld by the honorable Supreme Court of

Date - 16-6-2022

Ps cm D.No = 674

Sejid Khan
o/o CM

88

Pakistan vide CPLA No. 859/2015 Dated: 26/01/2017. There after the appellant preferred Departmental appeal and after its rejection the appellant again approached the Service Tribunal KPK, Peshawar where it was dismissed vide service appeal No. 436/2015 Dated: 24/12/2018.

6. The appellant filed CPLA No. 673/19 and the Apex Court was pleased to allow the appellant to seek his remedy before the Govt/Authorities vide order dated: 28/03/2022 hence this appeal on the following grounds.

GROUNDS

- a) That appellant has on his credit more than 21 years unblemished service.
- b) That due to enmity, NAB, appellant along with his family members exiled from the scene which was culminated into his removal from service under Removal from Service (Special Powers) ordinance, 2000 and Govt. of KPK, Civil Servant (E&D) Rules, 1973.
- c) The appellant was dealt with under two different enactments SRO 2000, and E&D Rules, 1973 and the said enactment has total different mechanism of the case before the appellant authority as well as the Service Tribunal. Such double jeopardy was declared null and void in Plethora of the judgments by the Apex Supreme Court of Pakistan, having different mechanism, so the impugned order was total in disregard of law.
- d) That the charge of corruption leveled against appellant was not proved in the competent court of law, that is why, he was acquitted from the baseless charges of corruption by the competent court of law.
- e) That filling appeal before the Service Tribunal Prior to his case pending disposal before the High Court was futile exercise which has non-binding effect upon the instant case of appellant.
- f) That the impugned order was given effect retrospectively while under the law, no order could be effected with retrospective effect, on this score alone, the impugned order become null and void in the eyes of law.
- g) That when appellate earned acquittal from the competent court of law, then the former proceedings carried out against him has no legal value in the eyes of law.
- h) That the Service Tribunal also fell in legal error as criminal appeal was pending disposal before the legal forums and the Tribunal should have waited for the final result of the criminal case.
- i) That the Honorable Tribunal accepted such like appeals of various appellants like one of Gul Jamal E.A.C (Retired) and he was honorably retired enjoying all benefits. His absence was more than of appellant. (Copy attached). (ii) the other is Sher Hassan assistant P&D department NWFP

Fair Copy

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To

The Secretary Establishment

Govt of KPK Peshawar

Subject: Appeal against office order No SOE-II(ED, (381)/92 dated 4.3.2003 of the Secretary of KPK Esstt Department Peshawar where by appellant was removed from service retrospectively

Respected Sir,

It is humbly stated that grant of permission by the August supreme Court to seek ready with provincial Govt, I had submitted the above named appeal to the honorable Chief Minister KPK which was sent to your office for necessary action. I have been waiting for the outcome of my appeal. Now I have come to know that my appeal has been failed and notification issued in this respected. But I have not received the copy of the sad notification.

Kindly issue me the copy of regret Notification

Thank you

Yours obediently

Abdul Munir Khan

Date 20-10-2022

Mobile 0342-9780424



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annex M " M

91

NO.SOE-II(ED)/2(381)92
Dated Peshawar the August 17, 2022

To

The Section Officer (Lit/Estt.).
Chief Minister's Secretariat, Khyber Pakhtunkhwa.

Subject:

APPEAL AGAINST OFFICE ORDER NO.SOE-II(ED)2(381)92
DATED 04.03.2003 OF THE SECRETARY GOVT. OF KP, ESTT
DEPARTMENT PESHAWAR, WHEREBY APPELLANT WAS
REMOVED FROM SERVICE RETROSPECTIVELY

I am directed to refer to your letter No.SO(Lit/Estt)CMS/KP/4-1/Appeals/2022/4562 dated 23.06.2022 on the captioned subject and to state that the appeal of the subject appellant was examined in light of relevant rules and filed as the same has already gained finality.

2 Furthermore, the appeal of the appellant is badly time barred for 18 years and it is a matter fait accompli; has no ground for reconsideration being twice dismissed by the Khyber Pakhtunkhwa Service Tribunal and upheld by the August Supreme Court of Pakistan vide its judgment dated 11.03.2010.

Encl: As above.

SECTION OFFICER
(ESTABLISHMENT-II)

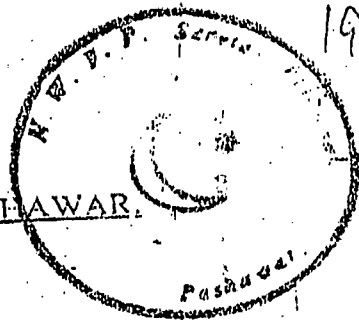
ENDST: NO & DATE EVEN

Copy forwarded to the:-

- 1) PS to Secretary Establishment Department, Khyber Pakhtunkhwa
- 2) PS to Special Secretary (Estt.), Establishment Department.
- 3) Mr. Abdul Munir Khan S/O Jehangir Khan, Village and Post office Bahadri, Tehsil and District D.I. Khan in response to his appeal.
- 4) PA to Additional Secretary (Estt.), Establishment Department
- 5) PA to Deputy Secretary (Estt.), Establishment Department.

SECTION OFFICER
(ESTABLISHMENT-II)

92



BEFORE THE N.W.F.P. SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1113 //2007

Date of institution - 17.11.2007
Date of decision - 22.05.2008

Syed Gul Jamal S/O Syed Hazrat Jamal Ex-ADO (Finance) District Government, Swabi Resident of House No.249, Sector J-1, Phase-II, Street No.4, Hayatabad Peshawar.....(Appellant)

VERSUS

- 1. N.W.F.P, through the Chief Secretary, Government of N.W.F.P, Peshawar.
- 2. Secretary Establishment Department, NWFP, Peshawar....(Respondents)

Appeal against Respondent No. 1's order No SO(A)1-2/GS/07/1544, dated 19.10.2007 (received on 22.10.2007), whereby the appellant's departmental appeal/representation against order No. SOE-II (ED) 2(450) 2000 dated 24.11.2003, removing the appellant from service under the Removal from Service (Special Powers) Ordinance, 2000 was not entertained.

Mr. Atiqur Rehman Qazi, Advocate.....For appellant.
Mr. Tahir Iqbal, AGP.....For respondents.

MR. NOOR-UL-HAQ.....MEMBER.
MR. SULTAN MAHMOOD KHATTAK.....MEMBER.

JUDGEMENT

NOOR-UL-HAQ. MEMBER: - This appeal has been filed by the appellant against Respondent No.1's order dated 19.10.2007 received by him on 22.10.2007, whereby the appellant's departmental appeal/representation against order No. SOE-II (ED) 2(450) 2000 dated 24.11.2003; removing him from service, under the Removal from Service (Special Powers) Ordinance, 2000 was not entertained. He has prayed that on acceptance of this appeal the impugned orders may be set aside and he



2. Brief facts of the case as narrated in the memo of appeal are that the appellant being qualified and eligible was selected and appointed as Naib Tehsildar by the Government of N.W.F.P. in the year 1979. Since then he has been serving continuously and has been performing his duties honestly and diligently. The appellant was promoted and appointed as Tehsildar Peshawar where he served for a period of 6 years before being promoted and appointed as E.A.C. Nowshera in the year 2000. Having served for about a year as E.A.C. Nowshera, the appellant was transferred and posted as A.D.Q.R, City Government Peshawar. He was last posted as Additional District Officer (Finance), District Government Swabi. The appellant could not perform his official duties due to certain family feuds with the residents of Shewa Village, Tehsil and District Swabi, this being close to his native village Rustam. Finding himself and his family under threat and eminent danger, the appellant applied for leave without pay, which was granted by the competent authority and was later on extended on his request. The appellant's family feuds having been resolved recently, he was able to return to his village Rustam where he was informed that there was a N.A.B. case pending against him. Accordingly, the appellant approached the N.A.B. Authorities where he surrendered himself and was sent to judicial lock-up. The appellant was released on bail under orders of the Hon'ble Peshawar High Court on 16.5.2007. After his release, the appellant came to know from the Secretariat that he has been removed from service on 24.11.2003 because of the alleged absence from duty. Aggrieved from the said order the appellant preferred a departmental appeal/representation,


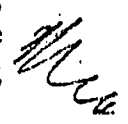
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which has failed to bear fruit. Hence, the instant appeal has been filed on the following grounds:-

- (a) The impugned orders are arbitrary, discriminatory, mala fide, without jurisdiction and without lawful authority;
- (b) The appellant finding himself in a precarious position had obtained leave as is evident from the order granting leave dated 4.2.2002 & 24.4.2003 extension of the said leave was requested because of the continuing danger to his life. The appellant, by then having put in more than 22 years of service, was entitled for leave applied for including the extension requested. Under the circumstances, the respondent department was not justified, treating the appellant absent from his duties because he had been granted leave of absence from duty. The impugned order is therefore, ill-founded and is liable to be said aside;
- (c) The appellant has a clean and spotless service record extending well over 22 years. He has been earning good ACRs without any complaint from any quarter. The alleged absence from duty being the only complaint from the respondents, it would not be fair to deny him the benefit of the good service rendered by him;
- (d) Regarding the appellant's alleged involvement in the N.A.B case under reference No. 1 of 2003, the fact remains that, there were 33 other officials (patwaris) of Tehsil Peshawar who were also accused of an identical offence and had also been convicted by the NAB Court Peshawar. On their appeal they have been acquitted by the Peshawar High Court vide its judgment dated 13.2.2007. On their release on bail earlier by the Peshawar high court vide order dated 14.12.2004 they were re-instated in service by the competent authority and all of them have been serving ever since then. The appellant has a much better case and is entitled to similar treatment at least;
- (e) The appellant was never served with any notice, nor was he informed through any other source requiring him to attend his office. Obviously no inquiry was conducted and the impugned order had been passed arbitrarily against the norms of equity and justice;
- (f) Imposition of the major penalty of removal from service was unfounded and it could not be justified on any ground, whatsoever. In case the respondent department did not need the appellant's service, he could have been offered an appropriate option acceptable to him, which has not been done in the instant case. The appellant's service record being absolutely clean, he could not be penalized by removing him from service arbitrarily;

ATTESTED
 EXAMINER
 M.P. Service Tribunal
 Peshawar

95

(g) The impugned orders have been passed in utter disregard of the law and rules regulating the service. The impugned action has been taken in violation of the established principles of equity and justice, justifying interference by the Service Tribunal.

3. The case had been admitted to full hearing on 13.05.2008. Notices has been issued to the respondents. They appeared through their representatives, filed written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant contended that the respondent department has neither held any inquiry nor has it put the appellant on show cause notice before imposing the major penalty of removal from service on him. He referred to superior courts rulings in which it had been held that imposition of major penalty of dismissal from service must be preceded by discreet inquiry and providing the accused official opportunity of being heard. The only guilt attributed to the appellant has been that of absence from duty. In fact he had applied for leave without pay, which was granted to him by the competent authority and was later on extended on his request. Thereafter, the appellant was arrested by the NAB authorities and sent to the judicial lock-up. This fact was in the knowledge of the respondent department. The Hon'ble Peshawar High Court on 16.5.2007 released him on bail. The absence of the appellant was not willful but due to unavoidable circumstances which could have been condoned. There were 33 other officials (patwaris) of Tehsil Peshawar who were also accused of an identical offence and had also been convicted by the NAB Court Peshawar, on their appeal they have been acquitted by the Peshawar High Court vide its judgment dated 13.2.2007. On their release on bail

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HIGH COURT

earlier by the Peshawar high court vide order dated 14.12.2004 they were re-instated in service by the competent authority and all of them have been serving since then. After his release, the appellant came to know from the Secretariat that he had been removed from service on 24.11.2003 with retrospective effect, which is against the law, rules and dictum of the Superior Courts. Reliance was placed on 1985-SCMR-1178 and 2002-SCMR-1124.

"...Removal from service...order of departmental authority, held, could not be made to operate retrospectively. Order of removal could take effect only from date it was passed."

"...Removal from service...Order purporting to give retrospective effect to order of removal from service, held, patently unlawful and void in relevant regard...Such order could not be given effect to."

The appellant had been penalized for seeking extension in the leave, something the necessity of which could not have been logically ruled out. Having put in more than 22 years spotless service, the appellant was entitled to extra ordinary leave for 5 years but his requests for extension in leave had been turned down without assigning any cogent reason. Instead, he has been removed from service by the incompetent authority without observing the legal procedure. The impugned penalty, being drastically harsh, void and not commensurate with the gravity of the absence attributed to appellant, was liable to be set aside. The departmental appeal of the appellant has not been entertained being time barred. In this respect the learned counsel for the appellant referred to several superior courts rulings i.e. 2005 PLC (C.S) 450 and 1996-SCMR-856:-

"...S.3-Void order and erroneous order—Limitation for setting aside..Bar of limitation can be ignored in respect of void orders but not in respect of erroneous orders...Question of limitation would not

ATTESTED
 Peshawar
 Service Tribunal

vires. Where order was without jurisdiction and void, it need not be formally set aside. (Void order)."

It is advantageous to refer to the judgment of august Supreme court of Pakistan reported in 2004-PLC-(C.S) 1014, wherein it was held that decision of cases on merits always to be encouraged instead of non suiting litigants on technical reason including ground of limitation.

6. The learned AGP contended that the appellant had applied for leave without pay based on his application wherein he had not mentioned family feud and the leave was granted to him for a period of 365 days. He again requested for the grant of extension and leave was extended for a period of 90 days. On expiry of the said leave on 5.6.2003, the appellant neither reported for duty on 6.6.2003 nor did he apply for extension in leave etc. Accordingly in light of instructions contained in letter No. SOR-II(E&AD)(4)/2000 dated 1.8.2001 read with rule 8-A of the E&AD Rules, 1973, a notice of absence was served upon him asking him to resume duty within 15 days. Due to non-receipt of response from the appellant, a notice of absence was published in two newspapers i.e Urdu and English asking him to resume his duty within 25 days as per requirements of the relevant rules. When no response was received from him within the prescribed period the case regarding his removal from service was submitted to the competent authority i.e Chief Minister, NWFP through a summary who approved the penalty of removal from service w.e.f 6/6/2003 against the appellant as provided under ruled 8(a) of the E&AD rules, 1973, as the appellant was no more a Government Servant after 6.6.2003. The appellant has preferred a departmental appeal before the Governor, NWFP on 23.6.2007, which was not entertained being time barred. Notices of absence from duty were served upon the appellant on his home address as well as in

two leading newspapers. Moreover, under the quoted rules the department was not required to conduct enquiry as there is no specific procedure in the NWFP Removal from Service (Special Powers) Ordinance, 2000. He prayed that the appeal may be dismissed.

7. After hearing the arguments on both sides and having perused the material available on file, the Tribunal holds that the claim of the appellant is bonafide. The appellant had admittedly more than 22 years service at his credit and he has been removed from service on sole reason of absence vide the order dated 24.11.2003 without observing the legal procedure, as no show cause notice, charge sheet/statement of allegations have been served upon him. No inquiry has been conducted against him and he had been condemned unheard. Hence, the Tribunal holds that the order has been legally defective, void, arbitrary and suffered irregularity besides being drastic, harsh and not commensurate with the gravity of the offence attributed to the appellant and are therefore, not tenable in the circumstances of the case.

8. Looking from another angle though there was allegation of absence from duty against the appellant, which appears to be not willful, however, absence from duty is a mis-conduct within the meaning of law, for which the law has prescribed a proper procedure which has to be followed in all circumstances but in the instant case the procedure prescribed by law has not been followed by the respondent department, making the impugned order null and void.

9. As sequel to foregoing, the Tribunal accepts the appeal and set aside

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

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department is directed to re-instate the appellant into service. However, the intervening period during which the appellant remained out of service shall be treated as extra ordinary leave (leave without pay). The parties are left to bear their own costs. File be consigned to the record after completion.

ANNOUNCED

22.05.2008

(SULTAN MAHAMMAD KHATTAK)
MEMBER.

(NOOR-UL-HAQ)
MEMBER.

Date of presentation of application	22-5-08
Number of sheets	3200
Copying fee	18
Witness	
Total	18
Date of copy	18-5-08
Date of completion of copy	18-6-08
Date of delivery of copy	18-6-08

GOVERNMENT OF N.W.F.P.
PLANNING ENVIRONMENT & DEVELOPMENT DEPT.

Dated Peshawar the 11th Dec: 1999.

1. SO(ESTT)PE&D/087/2-146/97-Vol.II. WHEREAS Mr. Sher Hassan, Assistant PE&D Department was involved in a murder case vide Police Station Mithra WIR No.425 dated 10.11.1997.

2. AND WHEREAS he failed to bring the fact of his involvement in a criminal case to the notice of the Head of Department as required in Rule 20 of the NWFP Govt: Servants (Conduct) Rules 1973 and remained absent from 16.2.1998 after granting 60 days earned leave by the Services & General Admn. Department NWFP from 18.12.1997 to 15.2.1998.

3. AND WHEREAS he was informed at his home address through Registered Letter No.SO(ESTT)PE&D/087/2-146/97 dated 27.6.1998 to report for duty within 7 days but the said letter received back undelivered with the marks of postal authorities that he has changed his house.

4. AND WHEREAS he was issued a notice in the press on 8.12.1998 to report for duty within 15 days. He was further informed that if he failed to report for duty then exparte action under the rules will be taken against him which may result in termination of his services but he failed to report for duty till date.

5. NOW THEREFORE in exercise of powers under Rule 5(4) of NWFP Govt: Servants (Efficiency & Discipline) Rules 1973, I. Ali Begum, Secretary PE&D Department/Authority do hereby order to impose major penalty of "Removal from Service" on the accused official Mr. Sher Hassan Assistant with effect from 17.2.1998.

SECRETARY TO GOVT. OF NWFP
PLANNING ENV: & DEV: DEPARTMENT

Under: No.SO(ESTT:)PE&D/087/2-146/97-Vol.II Dated Peshawar the 11.12.1999

Copy forwarded to the :-

1. Accountant General, NWFP, Peshawar.
2. Deputy Secretary (Services) Govt. of NWFP, Services & General Admn. Department w/r to his D.O.No.SOS-IV(S&GAD)2-137/87 dated 23.8.1999.
3. P.S. to Addl. Chief Secretary, NWFP, Peshawar.
4. P.S. to Secretary, PE&D Department.
5. Section Officer (Secret), S&GAD, NWFP, Peshawar.
6. Section Officer (Services-IV), S&GAD, NWFP.
7. Section Officer (B&A), PE&D Department Peshawar.
8. Bill Assistant, PE&D Department, NWFP, Peshawar.
9. Mr. Sher Hassan S/O Mewa Khan Afridi, Village & P.O.Daag, Warsak Road, Peshawar.

Minovic
(KHUSHAK KHAN)
SECTION OFFICER (ESTT.)

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GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

NO. SOE-IV (E&AD)2 (137)/87

Dated Peshawar, the 23rd September, 2004



To

The Section Officer (Estt.)
P&D Department.

Subject: REINSTATEMENT IN SERVICE

I am directed to refer to your letter No. SO (Estt:) P&D/087 /2-146/97 Vol:II, dated 4th May, 2004 on the above cited subject and to state that the case has been examined in this Department and concluded that as a result of departmental proceedings, he was removed from service on the grounds of willful absence from duty despite the fact that his involvement in a criminal offence and the subjudiced case had already come into the notice of the Department. Now the judicial proceedings have attained finality and Mr. Sher Fassar, Ex-Assistant, P&D Department has been acquitted from the charge leveled against him, by the court of Additional District & Session Judge-X Peshawar, on the grounds of compromise between the parties, vide judgement dated 31st July, 2004, received with your letter No. SO (Estt) P&D/ 2-146/97 Vol:II dated 1st September, 2004.

In view of the above, it is requested that his case may be considered condoning the delay under rule 3 of the NWFP Civil Servants (Appeal) Rules 1986 read with the instructions contained in para-2 of S&GAD letter No. SOR.II (S&GAD) 3(4)/78-Vol:II, dated 29th February, 1988, as he has suffered a lot and deserves sympathetic treatment.

SECTION OFFICER (E.IV)

102

GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEV: DEPARTMENT

Dated Peshawar, January 18, 2013

SO(E) P&D/087/2-146/97/Vol-II: The Competent Authority is pleased to modify his Department Order of even number dated 01-01-2005 in respect of Mr. Sher Hassan, Assistant Secretary, P&D Department to treat his period of absence from duty i.e. 17-02-1996 to 17-02-2004 as period spent on duty under the provision of FR 54(a).

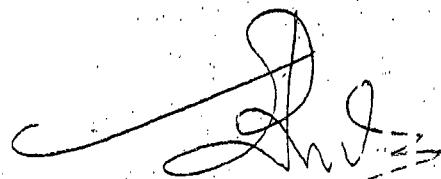
Additional Chief Secretary
Khyber Pakhtunkhwa.

Enclst: SO(E) P&D/087/2-146/97/Vol-II:

Dated Peshawar the January 18 2013.

Copy forwarded to the: -

1. Accountant General, Khyber Pakhtunkhwa.
2. Secretary to Govt: of Khyber Pakhtunkhwa, Establishment Department
3. Section Officer (B&A), Planning & Development Department.
4. PS to Additional Chief Secretary, Khyber Pakhtunkhwa.
5. PS to Secretary, P&D Department.
6. PA to Additional Secretary, P&D Department.
7. PA to Deputy Secretary (Admn.), P&D Department.
8. Officer concerned.



(KHURSHID ALAM)
Section Officer (Estt.)

VAKALATNAMA

(F03)

IN THE SERVICE TRIBUNAL KP, PESHAWAR.

No. _____/2022

عبدالرحمن خان

.....Petitioner.

VERSUS

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..... Respondents.

I, the undersigned, do hereby appoint and constitute,

FAZAL SHAH MOHMAND Advocate Supreme Court. To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I/We also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I/We further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 21-10-2020



CLIENT(s)

ACCEPTED BY:



FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.