FORM OF ORDER SHEET

Court of_		
_		
Case N	0	1636/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge			
1	2	3			
1-	15/11/2022	The appeal of Mr. Zardullah presented today by Mr. Sher Hyder Khan Advocate. It is fixed for preliminary			
		hearing before touring Single Bench at Swat on			
		Notices be issued to appellant and his counsel for the date			
,		fixed.			
		By the order of Chairman			
		REGISTRAR			
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BEFORE THE BEFORE THE KHYBER PAKHTUNKHUWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No

636 Of 2022

Zardullah

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Sports, Culture, Tourism, Archeology, Museum & Youth Affair Department Khyber Pakhtunkhwa & others

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Dated; 01-11-2022

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Appellant

Through

SHER HYDER KHAN ADVOCATE HIGH COURT

LL.B (Hons), LL.M (I-L)

The Magister & Associates 103, Said Anwar Plaza, Dabgari Gardens Peshawar Cantt Ph: 091-2214005 Cell: 0336-9377022

BEFORE THE BEFORE THE KHYBER PAKHTUNKHUWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No /636 Of 2022

Zardullah S/o Sher Dullah Khan (Chowkidar BPS-4) Resident of Bumburate Aneez, Post Office Ayun Chitral Lower.

.....Appellant

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary Sports, Culture, Tourism, Archeology, Museum & Youth Affair Department Khyber Pakhtunkhwa at Civil Secretariat Peshawar.
- 2. Director, Archeology & Museums Government of Khyber Pakhtunkhwa, at Directorate of Archeology and Museums Peshawar.

.....Respondents

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER DATED; 18-07-2022, VIDE WHICH THE APPELLANT HAS BEEN COMPULSORY RETIRED FROM SERVICE.

PRAYER;

On acceptance of the instant service appeal the impugned Order of Respondent No. 2 Dated; 18-07-2022 may please be set-aside and declared as illegal and void-ab-initio and the appellant may please be Re-instated in service with all the accruing back benefits admissible under the law.

Respectfully Sheweth;

Brief facts and grounds giving rise to the instant service appeal are as under;

ON FACTS

- **1. That** the names and addresses of the parties have correctly been given in the head note of the instant service appeal, which are sufficient for the purpose of effecting their proper services and citation etc.
- 2. That the appellant is law abiding citizen of Islamic Republic of Pakistan and serving the respondents department as (Chowkidar BPS-4) at Kalasha Dur Museum Bumburate Chitral Lower.
- Museum reported to the Respondent No. 2 in respect of the appellant that some high level delegates visited bumburate compound and the appellant has mis-behaved with them in the state of drunkenness and apart from that reported since 17-05-2018 the appellant is absent from duty at Chitral Museum, the Respondent No. 2 issue show cause notice Dated; 13-05-2022 to the appellant which has been properly replied vide reply Dated; 27-05-2022.

Copy of Show Cause Notice Dated; 13-05-2022 & Reply are Annexure "A" & "B"

4. That the appellant has been compulsorily retired from service vide impugned order dated; 18-07-2022.

Copy of Compulsorily Retirement Order Dated; 18-07-2022 is Annexure "C"

5. That the appellant feeling aggrieved from the impugned order of the respondent No. 2 submitted Departmental

Appeal/ Representation before the appellate authority on Dated; 01-08-2022, the same has not been decided within the statutory period. Hence the instant service appeal on the following inter alia grounds.

Copy of Departmental Appeal / Representation Dated; 01-08-2022 is Annexure "D"

GROUNDS

- **A.That** the impugned order is illegal, illogical and against the basic norms of justice hence; liable to be set aside.
- **B. That** no proper inquiry under the E&D Rules 2011 has been conducted nor proper procedure has been followed in this respect on this score is alone the impugned order is not sustainable.
- **C. That** the appellant has not been associated with the inquiry proceedings neither any statement of witness has been recorded in presence of the appellant, which smacks malafide on the part of the respondents.
- **D.That** the show cause notice issued by the Respondent No. 2 has been properly responded by the appellant wherein all the allegations have been denied with concrete evidence but the Respondent No. 2 has overlooked the same and passed impugned order in slipshod manner.
- **E. That** the allegation No. 1 and 2 are contradictory to each other on the one hand it is alleged that appellant had misbehaved the visitor in the bumburate compound while on the other hand it is alleged that the appellant is absent from duty at Chitral Museum since 17-05-2018, the allegation is

without any foundation and unjustified on the basis of which the impugned order has been passed.

- **F. That** other allegation leveled in the show cause notice does not warrant awarding of major penalty in the shape of compulsory retirement.
- **G. That** the appellant has never committed any act of omission or any misconduct during his service, the major penalty passed vide impugned order against law and fair play.
- **H.That** the appellant has not been treated in accordance to article 4 and 10-A of the constitution.
- **I. That** any other grounds in respect of the instant appeal will raised at the time of arguments with permission of the Honorable Tribunnal.

It is, therefore, most humbly submitted that on acceptance of the instant service appeal the impugned order of Respondent No. 2 Dated; 18-07-2022 may please be setaside and declared as illegal and void-ab-initio and the appellant may please be Re-instated in service with all the accruing back benefits admissible under the law.

Dated; 01-11-2022

Appellant

Through,

SHER HYDER KHAN ADVOCATE HIGH COURT LL.B (Hons), LL.M (I-L)

The Magister & Associates 103, Said Anwar Plaza, Dabgari Gardens Peshawar Cantt Ph: 091-2214005 Cell: 0336-9377022

CERTIFICATE;

It is certified that no other service appeal on the same subject has been filed before this Honourable Tribunal.

Counsel



BEFORE THE BEFORE THE KHYBER PAKHTUNKHUWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No

Of 2022

Zardullah

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Sports, Culture, Tourism, Archeology, Museum & Youth Affair Department Khyber Pakhtunkhwa & others

AFFIDAVIT

I, Zardullah S/o Sher Dullah Khan (Chowkidar BPS-4) Resident of Bumburate Aneez, Post Office Ayun Chitral Lower Appellant; do hereby solemnly affirm and declare on Oath that the contents of the accompanying Service appeal along with interim relief; are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honourable Tribunal.

DEPONENT 15201-0268054-3

Cell: 0345-5819162

Verified by;

SHER HYDER KHAN ADVOCATE HIGH COURT LL.B (Hons), LL.M (I-L)

BEFORE THE BEFORE THE KHYBER PAKHTUNKHUWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No

Of 2022.

Zardullah

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Sports, Culture, Tourism, Archeology, Museum & Youth Affair Department Khyber Pakhtunkhwa & others

ADDRESSES OF PARTIES

APPELLANT

Zardullah S/o Sher Dullah Khan (Chowkidar BPS-4)
Resident of Bumburate Aneez, Post Office Ayun Chitral
Lower

RESPONDENTS

- 1. Government of Khyber Pakhtunkhwa through Secretary Sports, Culture, Tourism, Archeology, Museum & Youth Affair Department Khyber Pakhtunkhwa at Civil Secretariat Peshawar.
- 2. Director, Archeology & Museums Government of Khyber Pakhtunkhwa, at Directorate of Archeology and Museums Peshawar

Through,

SHER HYDER KHAN ADVOCATE HIGH COURT LL.B (Hons), LL.M (I-L)

The Magister & Associates 103, Said Anwar Plaza, Dabgari Gardens Peshawar Cantt Ph: 091-2214005 Cell: 0336-9377022

Appellant



DIRECTORATE OF ARCHAEOLOGY AND MUSEUMS GOVT. OF KHYBER PAKHTUNKHWA, PESHAWAR

TAKHTUNKHWA, PESHAW Email: <u>info.archaeology@kp.gov.pk</u>

No. <u>A-S7</u> / Archymus/ / 3 3 5 Dated: <u>13-05-2022</u>

SHOW CAUSE NOTICE

Tel# 091-9211194, 9211488

WHEREAS you, Mr. Zar Dullah, Chowkidar (BPS-03), Chitral Museum, Chitral is hereby charged of having committed the following acts of omission and commission which constitute inefficiency and misconduct under Rule 3 Sub Rule 'A,B & D' of the Government of Khyber Pakhtunkhwa Establishment and Administration Department (Efficiency and Disciplinary) Rules,2011.

i. That as per report of the Incharge Chitral Museum and Kalasha Dur Museum Bamborate Chitral some high level delegates visited the Bamborate Compound and you found disappeared/unavailable and when later on, you arrived at the site you were fully drunk and misbehaved with the delegates.

ii. That you were deputed for duty to Chitral Museum, Chitral vide office order NO. 1304-6/Archymus dated 17-05-2018 but you did not join and recently both the incharges of Chitral Museum and Kalasha Dur Museum Bamborate Chitral directed you to report Directorate of Archaeology and Museums Peshawar but you did not comply the office orders.

iii. That, you are guilty of misconduct, habitually absenting himself from duty without prior approval and engage yourself in subversive activities.

iv. That you also failed obey the order/directions of high ups and use abusive language during duty hours.

v. That you have been found of not paying interest/attention to your official duties.

vi. That you have been suspended from service due to above mentioned charges under Rule-6 of the Khyber Pakhtunkhwa E&D Rules, 2011.

vii. That You were living inside the kalash compound without permission and intentionally damaged the structures/compound, despite of clear direction to vacate but you failed to follow the said directions.

viii. That your above acts and negligence in your official duty are totally against the rules, regulations and discipline.

ix. Your above acts tantamount to inefficiency and misconduct towards official duties.

- 2. And WHEREAS, I, being Authorized Officer after examining it is concluded that you are prima-facie guilty of the charge of inefficiency, absenting habitually and misconduct and so it has been decided that conducting of an inquiry in your case is not necessary under Rule-5, Government of the Khyber Pakhtunkhwa Establishment and Administration Department (Efficiency and Disciplinary) Rules, 2011.
- 3. Now therefore, you Mr. Zar Dullah Khan, Chowkidar (BPS-03), Chitral Museum, Chitral is hereby called upon to Show Cause in writing within fourteen days of this Notice.
- 4. Your written reply to the Show Cause Notice should reach the undersigned within 14 days of issuance of this Notice failing which ex-parte decision shall be taken against you as per law.

Endst. No. 1335-39//Archymus

(Muhammad Arif)
LITIGATION OFFICER
Dated/3/5/2022

Copy to:-

1. PA to Director, Archaeology and Museums Govt. of Khyber Pakhtunkhwa for information.

2. Superintendent (Estab), Directorate of Archaeology & Museums, Peshawar.

3. Incharge, Chitral Museum, Chitral & Kalasha Dur Museum Bamburate Chitral for information.

4. Official Concerned.

5. Personal file/Service Book.

LITIGATION OFFICE

13 \(\frac{5}{2.12} \cdot 2) (2) (2) (335 / Archymu) 57 - A in with 1335 / 335 / Archymu) کرارش سے کے برائے کرم خواجی محدرہ سورلار گاو ما حد سمے سا تا ہا ہے۔ ال سرس و بي يرموجودان ميرم زوفره ليك بنج بن مسك وج سه مرا آناه مك ميانا في ابا 2 منسف عبد لدف برآ را ما مرا الله سا تقو کافی تمیز به ساعقه می بیشن آ را اللین و «فعدراک وحہ سے بھی کے اندم نے جس فیس فیل فال کھا کا ان کے لیے تیار ہو۔ ورن ہمینہ سے ہم ان کے لیے کیا تا بھی تیار کرے تھے اور سیامان کی کی مورو میں اپنے تعریب سیامان لا تاتیا۔ رومرا الزام كي مين في مغراب بيا في مرامر غلاي . تقريبًا الاسال موكك بين من مين شان يؤي معول تیں سے میں نے مشراب کوع فوٹک میں نگا باسے میردیاس بیسے نہونے کا دم میں من دارکٹر برا میں اور مجعد عیرال عب ساتوا دو میں عیرال میں دروئی برتھا۔ عب کمیاد ندر میمان آنے لا فریس نے دارسرمامب سے درمواست سائے مجھے کالاشارور مجے درور انفوں نے مجھے کہا کہ جاؤا دھر درموں کرور تب اسے میں معار نزوس د يو ي مرينام ديماع سون

من نے بھینکہ ڈبول ک مع اسر منے بی ڈبرئی سے ننہ جانز نہی ہوا۔ ان کو میں دفی المرضی بڑی ہو دو اسكے ليئے میں عاما اور مہر ما حکم میرا بعانی زراج در فی کرتا.

می نے میں بھی اور رزنے منے نین فورا سے ہمیشہ سے اپنے سیبرزک شیداری ک عام

ی مجعد اینی درون عروز ید امر می دروی می بیشه سے دلیسی فرون اربی این اور کی بین میں در این میں اسے بیلے محصد وی اور این بن ملیه میں در این اور کی در این بن ساملے اور کی در این بن ساملے اور کی در این این ساملے اور کی در این بن ساملے اور کی در این این ساملے اور کی در این این ساملے اور کی در اور کی در این بن ساملے اور کی در اور

Zardyllah 2 av dyllan Detez 27/05/2022

لموت. میں بیستہ سے باسر ابری تعا اور افزندہ میں رہوں کا. آپ نابعدار. زردانته فرنور فيترال مرزع جيرال.

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اساً ئنيده اين همراه لائميل OUT - DO District: Chitral (L) Yearly OPD NO: Name: Sukana Father / Husband's Name Age 1241 Sex F Address Anest Health Problem / Diagnosis: __ Patient Seen by: Date (s) History / Clinical Finding / Action Taken 4/5/22 High grade fever, Vornitting, Louse motion, Dass Ki line Inh RIL som hi stat Inj Cotto xone Scomy hi stat

inj hetronidazete I word he stat

inj Bojalgan 100ml /11 stat

inj hetacalan /2 hi stat Dexap & Start PICI

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To whom it may concern! A patient him Suhan from arrest came to our hospital on Energency basis à high grade Fever, & G. E on. 415/22 at about 6:00 pm, we retained her for about (2) two hours. after that we discharg her on home treatment. Hope this may suffice for inte Thank's.

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DIRECTORATE OF ARCHAEOLOGY AND MUSEUMS GOVT. OF KHYBER PAKHTUNKHWA, PESHAWAR

Tel# 091-9211194, 9211488

Email: info.archaeology@kp.gov.pk

No. 1934 Archymus

Dated <u>#14-07-2022</u>

Office Order

Whereas, disciplinary proceedings were conducted against Mr. Zar Dullah, Chowkidar (BPS-03), under suspension within meaning of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

Whereas, Show Cause notice was issued to the accused/official with the following allegations:-

- i. "That as per report of the Incharge Chitral Museum, Chitral and Kalasha Dur Museum Bamborate, Chitral some high level delegates visited the Bamborate Compound and you found disappeared/unavailable and when later on, you arrived at the site you were fully drunk and misbehaved with the delegates.
- ii. That you were deputed for duty to Chitral Museum, Chitral vide office order NO. 1304-6/Archymus dated 17-05-2018 but you did not join and recently both the incharges of Chitral Museum, Chitral and Kalasha Dur Museum Bamborate, Chitral directed you to report Directorate of Archaeology and Museums Peshawar but you did not comply the office orders.
- iii. That, you are guilty of misconduct, habitually absenting himself from duty without prior approval and engage yourself in subversive activities.
- iv. That you also failed obey the order/directions of high ups and use abusive language during duty hours.
- v. That you were living inside the kalash compound without permission and intentionally damaged the structures/compound, despite of clear direction to vacate but you failed to follow the said directions."

Whereas, the Competent Authority/ Director Archaeology & Museums after considering contents of the reports and related facts of the case and reasons/grounds thereof was pleased to dispense with inquiry under Rule 11 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.





And whereas, the accused/official was advised to submit written defense against the above charges within 14 days of receipt of notice, explaining as to why one or more penalties including the penalty of dismissal from service may not be imposed upon him under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, and also to communicate whether he wants to be heard in person.

And whereas, the accused/official submitted reply whereafter he was personally heard in detail on 23.06.2022 by the Competent Authority/ Director Archaeology & Museums Peshawar.

Whereas, the material on record, his act/behavior/omission and commission are not required to be forgiven on the record. The charges against the accused official are proved making him liable for maximum major penalty of compulsory retirement.

Mr. Zar Dullah, Chowkidar (BPS-03), (Accused/Official) has been held liable for awarding of major penalty accordingly, his compulsory retirement from service has been ordered.

Now, therefore, it is notified that the accused/official named above stands retired from service compulsorily within the meaning of Rule 4(1)(b)(ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, with immediate effect.

Dated 18 / 7 /2022

1. PS to Secretary Sports, Culture, Tourism, Archaeology, Museums & youth affairs for information.

Accountant General Office, Govt. of Khyber Pakhtunkhwa Peshawar.

District Account Office, concerned.

4. Superintendent (Estab), Directorate of Archaeology and Museums, Peshawar.

Superintendent (Accounts), Directorate of Archaeology & Museums Peshawar.

ncharge, Chitral Museum, Chitral for necessary action within time.

7. The official concerned.

Personal file of the concerned.

rector

20/07/022



(15) Lew e'
0-1/8/2022
Culture, tourism,

The Secretary Sports, Culture, tourism, Archeology. Musem & Youth Affairs Khyber Pakhtunkhwa, Peshawar.

Through proper changel:

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 18/07/2022, WHEREBY THE APPELLANT WAS COMPULSORY RETIRED FROM SERVICE.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS DEPARTMENTAL APPEAL. THE ORDER DATED 18/07/2022, MAY PLEASE BE SET-ASIDE AND THE UNDERSIGNED MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS.

RESPECTFULLY SUBMITTED:

The few lines are submitted for your kind and sympatric consideration as under:

- 1. That the appellant was appointed as Chowkidar. Ever since appointment, appellant had performed his duties assigned to him with zeal and devotion and there was no complaint, what so ever regarding his performance.
- 2. That the show cause notice was served upon the appellant wherein different baseless allegations levelled against the appellant. Which was properly replied by the appellant. Copy attached.
- 3. That without personal hearing and proper inquiry the major penalty of compulsory retirement was imposed upon the appellant vide order dated 18.07.2022, the appellant being feel aggrieved from the order dated 2.3.2021 therefore filling this instant departmental appeal on the following grounds among others

B

Grounds:

- A. That the appellant have not been treated in accordance with law hence the appellant right secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding appellant the major penalty, no proper inquiry has been conducted, the appellant have not been properly associated with the inquiry proceedings, statements of witnesses if any were never taken in the appellant presence nor the appellant have been allowed opportunity of cross examination, thus the proceedings so conducted are defective in the eye of law.
- C. that the appellant regularly performed his duties and never drunk and also very obey to all officials. The allegation levelled against the appellant is baseless.
- D. that the appellant residing in the room of chowkidar and never damaged the compound. And appellant is very punctual in his duties.
- E. That the appellant have been not allowed fair opportunity of personal hearing, thus the appellant have been condemned unheard.
- F. That the grounds taken in show cause may also considered integral part of the appeal.
- G. That the appellant have never committed any act or omission with bad or malafide intentions which could be termed as misconduct, albeit the appellant have been awarded the penalty.

It is, therefore, humbly prayed that on acceptance of this departmental appeal the order dated 18/07/2022, may please be set aside and the appellant may be reinstated to his post, with all back and consequential benefits.

.

Yours obediently,

Zardullah Chowkidar Chitral Musem Chitral

Date 01.08.2022



WAKALAT NAMA

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. /2022

ZAR DULLAH (Appellant)

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA, THROUGH SECRETARY SPORTS, CULTURAL, TOURISM, ARCHEOLOGY, MUSEUM & YOUTH AFFAIR DEPARTMENT, & Others

(Respondents)

I/we ZAR DULLAH Chowkedar BPS-04, Resident of Bumburate Kalasha Museum Chitral Lower, Appellant / Petitioner) hereby appoint and constitute **Sher Hyder Khan, Advocate High Court** as counsels (**For Appellant/ Petitioner**) in the above mentioned case, to do all or any of the following acts, deeds and things:-

- 1- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- 2- To sign, verify and file or withdraw all proceedings, petitions, appeals, revision, review affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for the conduct, prosecution or defense of the said case at any stages.
- 3- To receive payment of and issue receipts for all money that may be or become due and payable to us during the course or on the conclusion of the proceedings. To do all other acts and things this may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocate may do in the proceedings.
- b) Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

Hyde

Advocate

Accepted subject to term regarding payment of fee

BC.17-7888

SHER'HYDER KHAN ADVOCATE HIGH COURT

LL.B (Hons), LL.M (I-L)

The Magister & Associates

103, Said Anwar Plaza,

Dabgari Gardens Peshawar Cantt

Ph: 091-2214005 Cell: 0336-9377022

Signature of Appellant / Petitioner