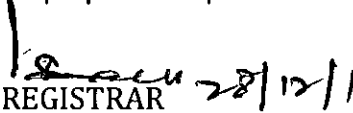




Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1564/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/12/2018	<p>The appeal of Mr. Muhammad Hamayun presented today by Mr. Fazal Shah Mohmand Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 28/12/18</p>
2-	04.2.2019	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>4-2-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
		<p>Appellant requests for adjournment as his learned counsel is engaged in many cases before the Honourable High Court. Adjourned to 07.02.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

07.02.2019

Appellant requests for adjournment due to over occupation of his learned counsel before the honourable High Court.

Adjourned to 14.03.2019 before S.B.


Chairman

14.03.2019

Counsel for the appellant present and seeks adjournment. Adjourned to 25.04.2019 for preliminary hearing before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

25.04.2019

Counsel for the appellant present and seeks adjournment. Adjourned to 18.06.2019 for preliminary hearing before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.06.2019

Appellant in person present and requested for adjournment on the ground that his counsel is not available today. Adjourned to 25.07.2019 for preliminary hearing before S.B.


(Muhammad Amin Khan Kundi)
Member

25.07.2019

Counsel for the appellant present.

Learned counsel states that a number of cases regarding similar proposition are fixed for hearing on 28.08.2019. Instant matter, therefore, be adjourned to a date thereafter.

Adjourned to 16.09.2019 for preliminary hearing before S.B.

Chairman



16.09.2019

Junior to counsel for the appellant present.

A request for adjournment is made due to general strike of the bar. Adjourned to 25.11.2019 for preliminary hearing before S.B.

Chairman

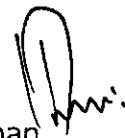


25.11.2019

Appellant present in person.

Requests for adjournment on account of general strike of the Bar. Adjourned to 22.01.2020 before S.B.

Chairman



22.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 20.02.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.



Chairman

20.02.2020

Counsel for the appellant present and seeks adjournment. Adjourned to 06.04.2020 in order to avail the outcome of case (s) pending before the Larger Bench regarding retrospective punishment.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

06.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 30.06.2020 for the same. To come up for the same as before S.B.



Reader

30.06.2020

Learned counsel for the appellant present and seeks adjournment. Adjourned to 22.09.2020 before S.B in order to avail the outcome of cases pending before Larger Bench of this Tribunal, regarding retrospective punishment.



Member (J)

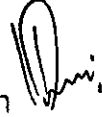
1564/2018

22.09.2020

Appellant present in person.

Requests for adjournment as ~~learned~~ his learned counsel is indisposed today. Adjourned to 2.12.2020 before S.B.

Chairman



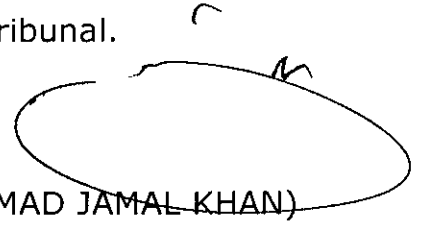
02.12.2020

Counsel for appellant is present.

Learned counsel requests for adjournment to a date after the decision of proposition regarding retrospective punishment by a Larger Bench of this Tribunal.

Adjourned to 17.02.2021 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)



17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.


Reader

1564/2018

29.06.2021

Counsel for the appellant present. Preliminary arguments heard.

Although there is violation on part of the appellant himself that on expiry of leave granted to him, he did not report for duty within the meaning of Rule 28 of the Civil Servants Revised Leave Rules 1981, which obviously is a burden on him to discharge but the narrative set up in the impugned order is arguable. Section 11 of the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 relates to overriding effect of the Ordinance viz-a-viz other laws. Accordingly, the provisions of the said Ordinance shall have effect notwithstanding anything to the contrary contained in the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there-under and any other laws for time being in force. In view of the non-obstante clause in Section 11 *ibid*, if there is any provision in the Ordinance; and the Khyber Pakhtunkhwa Civil Servants Act 1973 and rules made there-under contain a provision contrary to the provisions of ordinance, the latter shall prevail within the meaning of Section 11 *ibid*. Section 3 of the Ordinance *ibid* enumerates the ground for dismissal, removal and compulsory retirement etc and amongst them one is being guilty of habitually absenting himself from duty without prior approval of leave. This ground is similar to ground in clause(b) of Rule 3 of the Government Servants (E&D) Rules, 2011. It is evident from discussion in the impugned order about facts that the appellant was granted nine months leave and he was due to turn back for duty on

28.02.2004 but failed to report his arrival on due date followed by continuous absence without any leave. This act of the appellant in terms of the impugned order was treated as misconduct and consequently he was dismissed from service in exercise of powers under N.W.F.P Removal from Service (Special Power) Ordinance, 2000. Obviously, the ground of absence of the appellant was not covered under definition of misconduct as defined in Section 3(1)(b) of N.W.F.P Removal from Service (Special Power) Ordinance, 2000. Apart from misapplication of the ground for proceedings, there is a point for arguments whether the continued absence of the appellant after expiry of his leave could be treated as habitual absenteeism when previously he had availed the approved leave. Subject to all just and legal objections including limitation, this appeal is admitted for regular hearing. Let the respondents come up with their written reply/comments to justify the validity of the proceedings culminating in the impugned order. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.

Deposited
Security Fee
28/11



Chairman

Stipulated period passed reply not submitted.

15.09.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


D

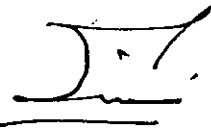

Chairman

11.11.2021

Ms. Uzma Syed, Advocate, for the appellant present and submitted fresh Wakalat Nama in favour of the appellant, which is placed on file. Mr. Kheyal Roz, Inspector (Legal) alongwith Mr. Javed Ali, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 04.02.2022 before the D.B.


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


(Salah-Ud-Din)
Member (J)

04.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 11.05.2022 before D.B for the same.


Reader

11.05.2022

Appellant in person present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Appellant requested for adjournment as his counsel is not available today. Last opportunity is granted. To come up for arguments before the D.B on 27.06.2022.



(Fareeha Paul)
Member (E)



Chairman

27.06.2022

Learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that she has not made preparation for arguments. Adjourned. To come up for arguments on 27.07.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

27th July 2022

Miss. Rabia Muzaffar, junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for respondents present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 12.10.2022 before the D.B.



(Salah-Ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman

12th Oct, 2022

Miss. Uzma Syed, Advocate present and submitted Wakalatnamat on behalf of the appellant. Syed Naseer Ud Din Shah, Asst: AG for respondents present.

Learned counsel for the appellant wants to amend the memo of appeal in order to challenge the original order dated 25.05.2004 which according to the learned counsel was not challenged by the ex-counsel for the appellant. She may do so within a week subject to all legal and just objections regarding limitation. To come up on 22.11.2022 before D.B.



(Fareeha Paul)
Member(Executive)



(Kalim Arshad Khan)
Chairman

22.11.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come for arguments before the D.B. on 19.01.2023.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman