

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1358/2017

Date of Institution ... 08.12.2017
Date of Decision ... 29.06.2021

Naik Muhammad, Ex-Senior Clerk
Office of Advocate General Khyber Pakhtunkhwa Peshawar.
... (Appellant)

Versus


Secretary Law Department Government of Khyber Pakhtunkhwa
Peshawar and one other.
... (Respondents)

MR. ASAD MEHMOOD,
Advocate ... For appellant.

MR. RIAZ AHMAD PAINDAKHEIL,
Assistant Advocate General ... For respondents.

MR. SALAH-UD-DIN, ... MEMBER (JUDICIAL)
MS. ROZINA REHMAN, ... MEMBER (JUDICIAL)
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER (EXECUTIVE)


JUDGMENT


SALAH-UD-DIN, MEMBER:- The appellant has filed the instant Service Appeal against the impugned order dated 21.08.2017, whereby the penalty of removal from service was imposed upon the appellant and the departmental appeal filed by the appellant was not responded by the appellate Authority.

2. Brief facts of the case are that the appellant has alleged that while serving as Junior Clerk in the Advocate General office Bannu bench, an altercation took place between the appellant and complainant Sharifullah, who was serving as HVC in Irrigation

Department and was pursuing cases on behalf of Irrigation Department; that the appellant was then transferred from Bannu to Peshawar, however on account of previous altercation, Mr. Sharifullah prepared fabricated and false corruption case against the appellant in order to take revenge from the appellant; that disciplinary action was taken against the appellant by the department and on conclusion of the inquiry, he was removed from service vide order dated 21-08-2017, which was challenged through filing of departmental appeal, which was not responded with in the statutory period of ninety days, hence the instant appeal.

3. Respondents submitted their comments, wherein it was mainly alleged that the appellant was involved in corrupt practices and as the allegations against him were proved during the regular inquiry, therefore, he has rightly been dismissed from service.

 4. The instant Service Appeal was decided by a Division Bench of this Tribunal on 31.01.2020 by rendering dissenting judgments, therefore, the appeal was referred to Larger Bench for its decision.

5. Learned counsel for the appellant has contended that as the complainant namely Sharifullah was having personal grudge with the appellant, therefore, he reported a false and concocted report to the office of Additional Advocate General in order to damage the career of the appellant. He next contended that neither the complainant Sharifullah nor Munawar Khan, regarding whose brother case, the appellant had allegedly demanded money from Sharifullah, had appeared before the inquiry committee for recording of their statements, which fact by itself signifies that the complaint filed against the appellant was false and baseless. He further contended that the inquiry was conducted in a slipshod manner and even an opportunity of personal hearing was not afforded to the appellant, therefore, the inquiry is tainted with material legal dents. He further argued that no material

whatsoever has been brought on record against the appellant during the inquiry, therefore, the impugned order of dismissal of the appellant is liable to be set aside, being not sustainable in the eye of law. Reliance was placed on 2008 SCMR 1369 and 2012 PLC (CS) 728.

6. Conversely, learned Assistant Advocate General for the respondents has argued that the appellant, while serving as Junior Clerk in the Advocate General office, had demanded money from one Sharifullah on the pretext that the then learned Additional Advocate General was demanding the same for extending concession to the party in its case against the Government. He further argued that a proper regular inquiry was conducted in the matter and it was proved that the appellant had demanded an amount of Rs. 60000/- on the pretext that the same shall be paid to Additional Advocate General Khyber Pakhtunkhwa, however the matter was decided against the party, from whom the appellant had taken Rs. 26000/-, therefore, the appellant returned Rs. 10000/- to the said party through easypaisa, while Rs. 5000/- were paid in cash, whereas the remaining amount is still outstanding against the appellant. He further contended that the appellant had brought bad name to the department and the allegations against him were proved during a regular inquiry, therefore, he has rightly been removed from service.

7. Arguments heard and record perused.

8. The allegations against the appellant are that the complainant Sharifullah S/O Gul Muhammad Khan R/O Ghazni khel, Lakki Marwat, who was serving as HVC in the irrigation department Khyber Pakhtunkhwa, had met the appellant in connection with a civil petition pending adjudication in the worthy Supreme Court of Pakistan, with a view to have some favour for the respondent against the government in the said petition; that the appellant demanded Rs. 60000/- from Mr. Sharifullah, on the

pretext that the then Advocate General has demanded the said amount and in this way the appellant managed to receive Rs. 26000/- from the complainant on the assurance that neither stay would be granted in the matter nor the same will be decided in favour of the Government. The result, however turned out other way round, therefore, the appellant returned Rs. 10000/- through easypaisa, while Rs. 5000/ were paid in cash, whereas Rs. 11000/- were still outstanding against the appellant.

9. It was upon the complaint of Sharifullah S/O Gul Muhammad Khan that disciplinary action was taken against the appellant. Similarly, Mr. Munawar Khan, who was serving as Naib Qasid in irrigation department, had met Sharifullah in connection with the civil petition pending in the august Supreme Court, in which the brother of Munawar Khan was respondent. The aforementioned Sharifullah and Munawar Khan did not opt to appear before the inquiry committee. The inquiry report would show that both Sharifullah and Munawar Khan were telephonically contacted by the inquiry officer, however they did not opt to appear for recording of their statements. Even the statement of departmental representative was not recorded in support of allegations against the appellant. When the very complainant has failed to appear before the inquiry officer for supporting the allegations against the appellant, it can be safely concluded that the allegations against the appellant remained unproved. It appears that during the inquiry proceedings, a letter dated 19-06-2017 allegedly issued by Mobilink office, University Road Peshawar addressed to the administrative officer Advocate General Office Khyber Pakhtunkhwa was the sole document, upon which, the inquiry officer based his findings for reaching the conclusion that the transaction of sending Rs. 10000/- by the appellant to the complainant stands proved. The afore-mentioned letter would show that although the details of the sender have been mentioned therein, however it does not show as to whom, the amount was

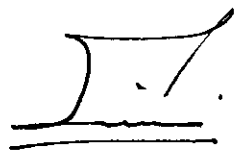
sent. Astonishingly, neither any official of Mobilink has been examined for proving of the transaction nor the said letter was put to the appellant in the shape of evidence during the inquiry, so as to provide him an opportunity of cross-examination in this regard. Furthermore, copy of statement of the appellant recorded during the inquiry would show that neither departmental representative nor the inquiry officer has cross-examined him, hence it will be legally presumed that his statement has been admitted as correct. In view of material available on record, no oral or documentary evidence has been brought on the record during the inquiry, which could substantiate the allegations against the appellant, therefore, the impugned order of removal of appellant is not sustainable in the eye of law.

10. In light of the foregoing discussion, the appeal in hand is accepted. The impugned order of removal from service of the appellant is set aside and he is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
29.06.2021



(ROZINA REHMAN)
MEMBER (JUDICIAL)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



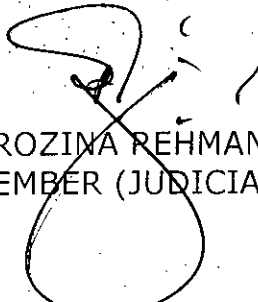
(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


ORDER
29.06.2021

Appellant alongwith Mr. Asad Mehmood, Advocate, present and submitted fresh Vakalatnama, which is placed on file. Mr. Manzoor Hussain, Private Secretary alongwith Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

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

ANNOUNCED
29.06.2021


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


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

قیمت 50 روپے	73022	  
ایڈوکیٹ: اسد محمود ایڈووکیٹ بار کونسل ایسوسی ایشن نمبر: BC 11-1120 رابطہ نمبر: 0344-9064149		
پشاور بار ایسوسی ایشن، خیبر پختونخواہ		

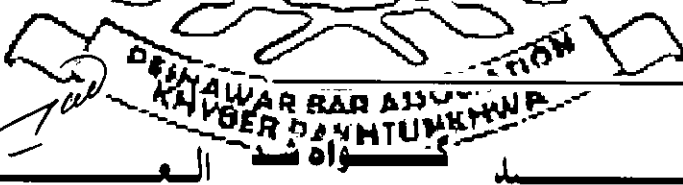
بعدالت جناب:

مخانب:	دعویٰ:
Appellant	
Naik Muhammad	علت نمبر:
بنام	مورخہ:
901	جرم:
	تھانہ:

باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے اسد محمود ایڈووکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقررات و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تازین پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



مقام پشاور کے لیے منظور ہے۔


22.06.2021

Appellant in person present. Muhammad Riaz Khan Paindakheil learned Assistant Advocate General alongwith Manzoor Ahmed Private Secretary for the respondents present.

The case was fixed for hearing today but it reveals that on 09.03.2021 the case was partially heard by the Larger Bench, therefore, the case is hereby send to Larger Bench on 29.06.2021.



Chairman




(Atiq-Ur-Rehman Wazir)

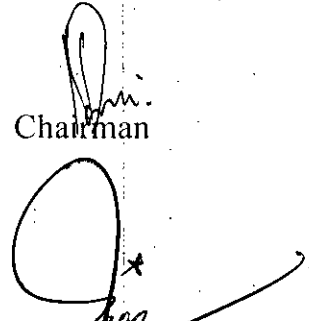
Member (Executive)

09.03.2021

Counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Manzoor Ahmad, Private Secretary for the respondents present.

Arguments heard. To come up for order on 12.04.2021 before this Larger Bench.


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


Chairman
(Mian Muhammad)
Member(E)

*Due to demise of the worthy
Chairman the case is adjourned
to 22-06-2021 for the same*



Raza


12:11.2020

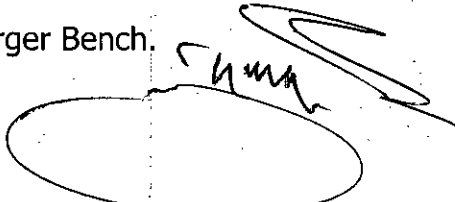
Appellant present in person.

Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 11.02.2021 for hearing before the Larger Bench.


(Rozina Rehman)
Member (J)


(Mian Muhammad)
Member (E)


(Muhammad Jamal Khan)
Member (J)

11.02.2021

Counsel for the appellant and Addl. AG for the respondents present:

Adjourned to 09.03.2021 for hearing before the Larger Bench due to paucity of time today.


(Rozina Rehman)
Member(J)


Chairman


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

1358/17


18/02/2020

Be laid before a larger bench minus the hon'ble members having the difference of opinion. To come up for further proceeding/arguments on 15/04/2019.

Notices to the parties be issued accordingly.


CHAIRMAN

Due to Covid-19 the case is adjourned. To come up for the same on 2-09-2020.


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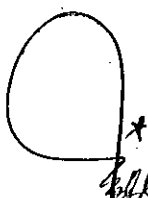
02.09.2020

Counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Manzoor Hussain P.S for the respondents present.

Due to paucity of time, the matter is adjourned to 12.11.2020 for hearing before the Larger Bench.


(Rozina Rehman)
Member(J)


Chairman


(Mian Muhammad)
Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1358/2017

Date of Institution ... 08.12.2017

Date of Decision ... 31.01.2020

Naik Muhammad, Ex-Senior Clerk, Office of Advocate General, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

The Secretary Law Department Government of Khyber Pakhtunkhwa, Peshawar and one other. ... (Respondents)

MR. ASAD MEHMOOD,
Advocate

--- For appellant.

MR.M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents

MR. AHMAD HASSAN

MEMBER(Executive)

MR. MUHAMMAD HAMID MUGHAL

MEMBER(Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he was appointed as Naib Qasid in the office of respondent no.2 in 1996 and subsequently reached the rank of Junior Clerk. That while posted at Bannu Bench one Sharifullah, HVC, Irrigation Department had exchanged hot words with him. Subsequently, on his written application disciplinary proceedings were initiated against the appellant and upon winding up major penalty of removal from service was awarded to him vide impugned order dated 21.08.2017. Feeling aggrieved, he filed departmental appeal on 30.08.2017, which remained unanswered, hence, the present service appeal. Enquiry was not conducted in the mode

and manner prescribed in the rules. The main complainant in the case did not appear before the enquiry officer for recording his statement, as was evident from the enquiry report. The enquiry officer telephonically contacted the complainant and he confirmed the facts/events contained in the said application. As no one appeared before the enquiry officer so neither statements were recorded nor opportunity was afforded to the appellant to cross examine those who had deposed against him. In short the appellant was condemned unheard.

03. Learned Assistant Advocate General argued that on the directions of the competent authority proper enquiry was conducted and after fulfillment of all codal formalities major penalty was awarded to the appellant. Evidence was gathered in the shape of written statements provided Mobilink Regional Office Peshawar through which it was proved that the appellant was guilty of taking illegal gratification.

CONCLUSION:


04. Prima-facie, the appellant while posted at Bannu Bench exchanged hot words with Mr. Sharifullah, HVC, Irrigation Department in connection with some court cases. Upon transfer of the appellant to Peshawar through a written complaint, he got him entangled in a corruption case. Departmental proceedings were initiated against the appellant by conducting enquiry. Upon completion of proceedings major penalty of removal from service was awarded to the appellant. However, charges of receipt of illegal gratification leveled against the appellant could not be proved during the course of enquiry. It merits mentioning here that the complainant failed to appear before the enquiry officer for recording his statement. He was telephonically contacted by the enquiry officer to get his version and he confirmed the contents of written complaint dated 22.04.2017. In the absence of the statement of the complainant the enquiry officer did not examine oral or

documentary evidence in support of the charges as stipulated in Rule-11(1) of E&D Rules 2011. As the star witness willingly abdicated from his right to be associated with the enquiry proceedings so his application/complaint lost its efficacy in the eyes of law. Furthermore, statements of witnesses were not recorded nor opportunity of cross examination was afforded to the appellant. For reasons best known to the enquiry officer, he did not record statement of Mr. Munawar Khan, Naib Qasid, Irrigation Department, whose brother's case was required to be filed in Supreme Court of Pakistan. Telephonic conversation of the enquiry officer with the complainant had no evidentiary value in the eyes of law thus not tenable/sustainable. In addition to this letter dated 19.06.2017 of Mobilink Regional Office, Peshawar instead of settling the dust created a lot of confusion. It does not clarify to whom Rs. 10000/- were sent as the name of the receiver/beneficiary was nowhere indicated. In the absence of concrete documentary evidence, I have every reason to believe that charge against the appellant turned out to be frivolous, unfounded and baseless. The canons of natural justice demands that appellant does not deserve the treatment he got at the hands of the respondents.

05. The events/facts elucidated above have also brought to the surface a crucial factor that even if the matter is remitted to the respondents to conduct de-novo enquiry it will not fetch any positive result, as the main complainant has already disassociated himself from the previous probe. There is no likely hood that this time he will appear before the enquiry officer for recording his statement thus holding enquiry would be just an exercise in futility and wastage of precious time and resources of the government. This aspect will have to be taken into consideration seriously. Dispassionate conclusion, I draw from the above discourse that the appellant deserves to be reinstated in service.

06. As a sequel to the above, the instant appeal is accepted, impugned order dated 21.08.2017 is set aside and the appellant is reinstated in to service with all back benefits.

Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
Member

(MUHAMMAD HAMID MUGHAL)
Member

(Not agreed dissenting note is attached)

ANNOUNCED
31.01.2020

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	31.01.2020	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 1358/2017</p> <p style="text-align: right;">Date of Institution 08.12.2017 Date of Decision 31.01.2020</p> <p>Naik Muhammad Ex-Senior Clerk Office of Advocate General Khyber Pakhtunkhwa Peshawar.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <p>1. The Secretary Law Department Government of Khyber Pakhtunkhwa Peshawar. 2. Advocate General Khyber Pakhtunkhwa Peshawar.</p> <p style="text-align: right;">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant</p> <p>present. Learned counsel for the appellant and Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Muhammad Tufail Senior Clerk present.</p> <p>2. The appellant (Ex. Senior Clerk office of Advocate General Khyber Pakhtunkhwa Peshawar) has filed the present service appeal against the order dated 21.08.2017 whereby major penalty of removal from service was imposed upon him.</p> <p>3. Learned counsel for the appellant argued that the appellant was appointed as Naib Qasid in the Advocate General Office in the</p>

31.1.2020

year 1996 and later on promoted as Junior Clerk and then as Senior Clerk; that as a result of false and fabricated case of corruption, the appellant was suspended from duty vide order dated 20.05.2017; that charge sheet was served upon the appellant on the ground that in order to favor the respondent Afsar Khan, the appellant demanded Rs.60,000/- in the name of Mr. Waqar Ahmad Additional Advocate General Khyber Pakhtunkhwa who was supposed to appear in the august Supreme Court of Pakistan in connection with Civil Petition titled Government versus Afsar Khan and that the appellant also received Rs.26,000/- in this respect; that the appellant replied the charge sheet and statement of allegation and thereby denied entire allegations; that the inquiry committee has not recorded the statements of the complainant Sharif Ullah and star witnesses namely Munawar Khan and Afsar Khan; that the inquiry committee in its report wrongly held that allegation of transaction of Rs.10,000/- stood proved against the appellant; that the report of Mobilink Regional Office Peshawar relied upon by the committee is not worth consideration and is incorrect; that Show Cause Notice was served upon the appellant which was also replied by the appellant while denying all the allegations; that on the basis of one sided inquiry, the impugned order dated 21.08.2017 in relation to imposition of major penalty of removal from service was issued against the appellant; that the departmental appeal filed against the impugned order, was not responded. Further argued that the appellant has not been treated in accordance with law, rules and the

31.1.2020

whole action was taken against the appellant on the baseless complaint made by Sharif Ullah; that the inquiry committee held the appellant responsible in relation to transaction of Rs.10,000/- without recording the statements of witnesses; that no chance of personal hearing was provided to the appellant; that length of service of the appellant was not taken into account by the authority.

4. As against that learned AAG argued that as a result of written statement/complaint by Sharif Ullah son of Gul Muhammad Khan (HVC) Irrigation Department, proper departmental action was initiated against the appellant; that proper charge sheet/statement of allegation was served upon the appellant and the appellant has also filed reply of the same; that the inquiry committee conducted the inquiry and submitted its report wherein it held the appellant responsible; that thereafter Show Cause Notice was issued to the appellant and the appellant filed reply of the same; that the competent authority after having considered the report of inquiry, material on record and circumstances of the case imposed major penalty upon the appellant; that the inquiry committee and the competent authority have no personal grudges with the appellant; that nothing is available on record to suggest that the impugned order is based on malafide; that the appellant confessed during personal hearing before the competent authority on 11.08.2017. Learned Assistant Advocate General while relying upon the office letter of the Mobilink Micro Finance Bank Limited/Mobilink Regional Office University Road, Peshawar dated 19.06.2017,

31.1.2020

AAA

argued that there is no explanation on the part of appellant that as to why he sent Rs.10,000/- to the complainant through Easy Paisa; that the impugned order was issued after fulfillment of all the codal formalities; that the victim party has not resiled from their allegations leveled against the appellant, rather avoided to appear before the inquiry committee due to fear of enmity.

5. Arguments heard. File perused.

6. Charge against the appellant was that case titled Government versus Afsar Khan was pending before the august Supreme Court of Pakistan and the appellant while performing his duties as Senior Clerk in the office of Advocate General Khyber Pakhtunkhwa Peshawar, demanded amount of Rs.60,000/- in the name of Mr. Waqar Ahmad Additional Advocate General Khyber Pakhtunkhwa in order to extend favor to the respondent Afsar Khan and that the appellant introduced some other person to the complainant Sharif Ullah as Mr. Waqar Ahmad Additional Advocate General Khyber Pakhtunkhwa and received amount of Rs.20,000/- from complainant on the guarantee that neither the stay would be granted nor the case shall be decided in favor of government and the appellant then also received amount of Rs.6000/- from Munawar Khan brother of respondent (Afsar Khan) and due to the issuance of stay orders by the august Supreme Court, the appellant returned Rs.10,000/- through Easy Paisa and then Rs. 5000/- whereas an amount of Rs.11,000/- is still outstanding.

7. The inquiry committee candidly mentioned in its report that

31-1-2020

the complainant is firm on the contents of his complaint and never retracted from his allegations and that Mr. Munawar Khan did not wish to pursue the case nor interested to invite the enmity of the appellant. The inquiry committee however gave finding that the transaction of Rs.10,000/- has taken place between the accused and complainant as confirmed by the Mobilink Regional office Peshawar vide its correspondence dated 19.06.2017.

8. There is no denial of the fact that case titled Government versus Afsar Khan was pending before the august Supreme Court of Pakistan as alleged by the complainant party and that stay order was also granted therein in favor of Government.

9. In his reply to the charge sheet, Show Cause Notice and departmental appeal the appellant pleaded that altercation with complainant led to the baseless and fabricated case of corruption. However he in his statement dated 10.06.2017 during personal hearing before the inquiry committee took the stance that he has no concern with the complainant and did not opt to produce any witness.

10. In the office letter/report of the Mobilink Micro Finance Bank Limited/Mobilink Regional Office University Road, Peshawar dated 19.06.2017 in relation to record of Easy Paisa dated 08.11.2016, the name of the appellant has been mentioned as Sender. The appellant however could not offer any explanation much less valid explanation to the transaction mentioned in the said office letter/report.

31.1.2020

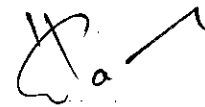
11. The complainant party has not preferred to personally appear before the inquiry committee but in the circumstances of the case, personal non-appearance of the complainant party before the inquiry committee does not amount giving clean chit to the appellant.

12. Learned counsel for the appellant remained unable to demonstrate that the inquiry committee or the competent authority was biased or had nourished personal grudge against the appellant or the punishment order was issued due to some ulterior motive.

13. In light of the above mentioned facts and circumstances of the case, the appellant has not been able to make out the case in his favor. The fact however cannot be lost sight of that the appellant had 20 years length of his service at his credit when the punishment of removal from service was imposed upon him. Hence while keeping in view the circumstances of the case and length of service of the appellant, for the purpose of safe administration of justice the punishment of removal from service is modified and converted into compulsory retirement from service w.e.f 21.08.2017 i.e. from the date of issuance of impugned order. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan)
Member

(Dissenting Judgment is attached)



(Muhammad Hamid Mughal)
Member

ANNOUNCED

31.01.2020

20.12.2019 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on ³¹10.01.2020 before D.B.

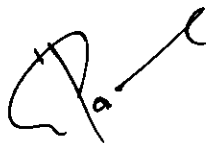

Member


Member

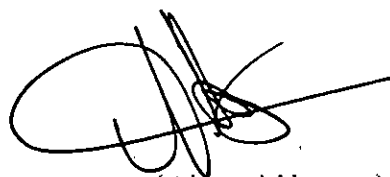
31.01.2020 Counsel for the appellant present. Asst: AG alongwith Mr. Muhammad Tufail, Senior Clerk for respondents present. Arguments heard and record perused.

The appeal was heard on today, however, after hearing members of the Divisional Bench failed to arrive at a consensus judgment. Separate judgments written by us be placed before the worthy Chairman for appropriate orders.

Announced:
31.01.2020



(Muhammad Hamid Mughal)
Member


(Ahmad Hassan)
Member

30.07.2019


Junior to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court Peshawar. Adjourn. To come up for arguments on 21.10.2019 before D.B.



Member


Member

21.10.2019

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not in attendance. Mr. Zia Ullah learned Deputy District Attorney for the respondents present Adjourned. To come up for arguments on 15.11.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

15.11.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 20.12.2019 before D.B.


Member


Member

05.04.2019

Counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Muihammad Arshad, Administrative Officer for the respondents present.

Learned AAG requests for time to place on file the record of transmission of money through Easy Paisa by the appellant to the complainant. Learned counsel for the appellant objects to the request on the ground that the said record was not produced during enquiry proceedings.

Adjourned to 29.05.2019 before the D.B. The requisite record shall positively be made available, subject to all just exceptions, on the next date of hearing.



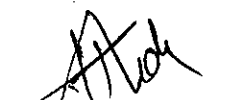
Member



Chairman

29.05.2019

Junior to counsel for the appellant and Mr. Riaz Paindakhel learned Assistant Advocate General alongwith Mr. Muhammad Arshad Admin Officer for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 30.07.2019 before D.B.



(Hussain Shah)
Member




(M. Amin Khan Kundi)
Member

05.12.2018

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Muhammad Tufail, Senior Clerk for the respondents present. Learned counsel for the appellant submitted rejoinder, copy of the same is handed over to learned Deputy District Attorney. Adjourned. To come up for arguments on 17.01.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

17.01.2019

Junior counsel for the appellant Mr. Taimur Ali Khan, Advocate present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Tufail, Senior Clerk for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 01.03.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

01.03.2019

Appellant in person and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 05.04.2019 before D.B


Member


Member

30.07.2018

Appellant Mr. Naik Muhammad in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. The letter made a request for adjournment. Granted but as a last chance. Case to come up for written reply/comments on 11.09.2012 before S.B.


Chairman

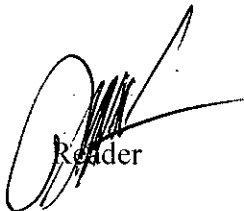
11.09.2018

Clerk to counsel for the appellant present. Mr. Arshad, Admin Officer alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. *To come up for written reply and adjournment on 05.11.2018 before D.B.B.*


Chairman

06.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 05.12.2018 before D.B.


Reader

06.03.2018

Clerk of the counsel for appellant present. Mr. Riaz Painsa Khel, Assistant AG for the respondent present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within seven(7) days, thereafter notices be issued to the respondents for written reply/comments on 23.04.2014 before S.B.

Appellant Deposited
Security & Process Fee



(Gul Zeb Khan)
Member

23.04.2018

Appellant in person and Addl. AG alongwith Muhammad Arshad, Administrative Officer for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on **08.05.2018** before S.B.

08.05.2018


The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 03.07.2018.


Member


Reader

03.07.2018

Appellant in person and Mr. Sardar Shaukat Hayat, Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments on **30.07.2018** before S.B.



Member

01.01.2018

Learned counsel for the appellant present.
Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant was appointed as Naib Qasid in Advocate General Office in the year 1996 and later on promoted upto the rank of senior clerk. That the appellant, since his appointment worked with full zeal and devotion and no complaint whatsoever was filed against the appellant in entire service. That the appellant was charge sheeted for the charge of getting money from a person who was respondent in a Civil Petition titled "Govt: Versus Afsar Khan," pending adjudication in the Supreme Court and removed from service vide impugned order dated 21.8.2017. The appellant aggrieved from the said order filed departmental appeal which was not responded within the statutory period of 90 days. That neither proper enquiry was conducted under the rules nor the appellant was provided opportunity of cross examination for proving the allegations.

Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 19.02.2018 before S.B.


(Gul Zeb Khan)
Member (Executive)

19.02.2018



Appellant alongwith his counsel and Assistant AG for the respondents present. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 06.03.2018 before S.B.


(Gul Zeb Khan)
Member

FORM OF ORDERSHEET

Court of _____

Case No. 1358/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08/12/2017	<p>The appeal of Mr. Naik Muhammad presented today by Mr. Muhammad Asif yousafzai Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;">  REGISTRAR 3/12/17 </p>
2-	15/12/17.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/01/18</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1358 /2017

Naik Muhammad

V/S

AG KPK & others.

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S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-03
2.	Copy of suspension order	--A--	04
3.	Copy of charge sheet & statement of allegation	---B---	05-06
4.	Copy of reply	---C---	07-09
5.	Copy of inquiry report	---D---	10-11
6.	Copy of show cause notice	---E---	12
7.	Copy of reply	---F---	13-15
8.	Copy of order dated 21.08.2017	---G---	16
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APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT,


(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,


(S. NOMAN ALI BUKHARI)

ADVOCATE PESHAWAR

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Contact No. 03339103240

Dated/ 06.12.2017

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1358 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1395

Dated 08/12/2017

Naik Muhammad, Ex-Senior Clerk
Office of Advocate General KPK Peshawar.

(Appellant)

VERSUS

1. The Secretary Law Department Government of Khyber Pakhtunkhwa Peshawar.
2. The Advocate General Khyber Pakhtunkhwa, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 21.08.2017 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATD 21.08.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTLY BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day
Registrar
8/12/17

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as Naib Qasid in advocate general office in the year 1996 and later on promoted to junior clerk and then promoted as senior clerk. The appellant since his appointment work with

full zeal and devotion and no complaint has been filed against the appellant in entire service.

2. That the appellant his tenure at Bannu Bench, Mr. Sharifullah HVC Irrigation department was pursuing cases on the behalf of Govt: matter of altercation took place between the appellant and him and then the appellant was transferred from Bannu to Peshawar, and recently he prepared a scandalous case of corruption against the appellant which is false and fabricated and only to took revenge. Thereafter the appellant was suspended from duty vide order 20.05.2017 and charge sheet was served upon the appellant. The appellant properly replied the charge sheet and statement of allegation and denied the entire allegations mentioned in the charge sheet. **(Copy of suspension order, charge sheet, statement of allegation & reply is attached as Annexure-A, B & C).**
3. That no regular inquiry was conducted against the appellant, only the fact finding inquiry was conducted in which neither the statement of the appellant was recorded nor given opportunity of cross examination of the witness but despite that the appellant has hold responsible by the inquiry committee. **(Copy of fact finding inquiry is attached as Annexure-D).**
4. That on the basis of fact finding inquiry show cause notice was served upon the appellant which was replied by the appellant and denied the entire allegation. **(Copy of show cause notice is attached as annexure-E).**
5. That on the basis of one sided inquiry, the impugned order dated 21.08.2017 was issued whereby the appellant was removed from service. So the appellant aggrieved from the said order filed departmental appeal which was not responded within the statutory period of 90 days. **(Copy of order dated 21.8.2017 and departmental appeal are attached as Annexure-F & G).**
6. That the appellant have no other remedy and constrained to file service appeal on the following ground amongst the others.

GROUND:

- A) That the impugned order dated 21.08.2017 and not taking action on the departmental appeal within statutory period of 90 days is against the law, rules facts and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.

- C) That no regular inquiry was conducted but only fact finding inquiry conducted in which neither the appellant was associated with the enquiry proceedings nor has any statement of witnesses been recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant which is violation of norms of justice and rule 6 (2) (3) of E&D Rules, 1973.
- D) That the whole action was taken against the appellant on basis of complaint which was made by Mr. Sharifullah which had tussle with the appellant and the basis of that complaint the appellant was removed from service which is against the norms of justice and fair play.
- E) That the inquiry committee in its clearly mentioned that the person namely Munawar Khan on being whom Sharifullah was compliant has no interested to pursue the case but despite that the inquiry committee hold responsible the appellant without recording the statement of the Munawar Khan which is violation of law and rules.
- F) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- G) That the appellant has not been treated in accordance with law and rules therefore the impugned order is liable to be modified to the extent of back benefits.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.


APPELLANT

Naik Muhammad

THROUGH:


(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT,


(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,


(S. NOMAN ALI BUKHARI)

ADVOCATE PESHAWAR



A' (4)

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 8461-64 /AG

Dated Peshawar, the 20-May-2017

Address: High Court Building, Peshawar.
Tel. No. 091-9210119

Exchange No 9213833
Fax No. 091-9210270

OFFICE ORDER

I, the Competent Authority, under rule 10(1)(a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, hereby constitute an Inquiry Committee comprising the following officers to conduct enquiry against Mr. Naik Muhammad, Senior Clerk of this office in the matter of misconduct and corruption, as detailed in the Charge Sheet / Statement of Allegations.

1. Mr. Muhammad Arshad Khan, Administrative Officer.
2. Mr. Amir Qadir, Superintendent (E & G).

Mr. Ayaz Khan, Superintendent (Judicial) of this office is also appointed as departmental representative to assist the Inquiry Committee in this regard as provided in rule 10 (1) (c) of the said rules.

The Inquiry Committee is further directed to submit the inquiry report/findings in the matter in accordance with the provisions of rule 11 (7) of the ibid rules.

Mr. Naik Muhammad is also placed under suspension under rule 6 of the rules ibid with immediate effect.

/_____
**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)**

Endst. No. & date even

A copy is forwarded for information and necessary action to:

1. Mr. Muhammad Arshad Khan, Administrative Officer.
2. Mr. Amir Qadir, Superintendent (E & G).
3. Mr. Ayaz Khan, Superintendent (Judicial).
4. Mr. Naik Muhammad, Senior Clerk of this office.

/_____
**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)**

ATTESTED

CHARGE SHEET

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, as the Competent Authority, hereby charge you, Mr. Naik Muhammad, Senior Clerk of this office, as follows:

1. That a person Sharifullah s/o Gul Muhammad Khan r/o Ghazni Khel, Lakki Marwat, presently serving as HVC in the Irrigation Department, Khyber Pakhtunkhwa met you in connection with a Civil Petition titled as "Govt. versus Afsar Khan" pending in the Supreme Court of Pakistan with a view to have some favour for the respondent against the Government.
2. That you demanded an amount of Rs.60,000/- in the name of Mr. Waqar Ahmed, Addl: Advocate General, Khyber Pakhtunkhwa, who was appearing in the Court on behalf of the Provincial Government, from the said person on account of taking a decision in his favour from the august Court.
3. That when insisted by complainant to make him meet with the Law Officer, you introduced another person (an imposter) as Mr. Waqar Ahmed, Additional Advocate General to the complainant with a view to fulfill your ulterior motive, nourished in your mind.
4. That you received an amount of Rs.20,000/- (twenty thousand) from the complainant on the guarantee that neither Stay would be granted nor the case decided in favour of the Government.
5. That when the case was fixed in the august Court, you received more six (06) thousand from Munawar Khan, brother of the respondent.
6. ✓ That after the Stay was granted, you returned ten thousands (Rs.10,000/-) through Easy Paisa and then Rs.5000/- after three (03) months whereas an amount of eleven thousands (Rs.11000/-) is still outstanding against you as per complainant.
7. That your such conduct appears to be highly objectionable and against the Efficiency and Discipline Rules as given in the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.
8. You are, therefore, required to submit your written defence within seven (07) days of the receipt of this Charge Sheet to the Inquiry Committee.
9. Your written defence, if any, should reach the Inquiry Committee within the specified period, failing which, it shall be presumed that you have accepted the charge leveled against you and have no defence to offer. In that case ex-parte action shall be taken against you as per available record, in accordance with law.
10. You are also directed to intimate as to whether you desire to be heard in person or otherwise?
11. The Statement of Allegations is also enclosed herewith.

ATTESTED



ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)

OFFICE OF ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

STATEMENT OF ALLEGATIONS

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, as the Competent Authority am of the opinion that Mr. Naik Muhammad, Senior Clerk of this office, has rendered himself liable to be proceeded against as he has committed the following acts/omissions within the meaning of rule-3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

1. That a person Sharifullah s/o Gul Muhammad Khan r/o Ghazni Khel, Lakki Marwat, presently serving as HVC in the Irrigation Department, Khyber Pakhtunkhwa met him in connection with a Civil Petition titled as "Govt. versus Afsar Khan" pending in the Supreme Court of Pakistan with a view to have some favour for the respondent against the Government.
2. That he demanded an amount of Rs.60,000/- in the name of Mr. Waqar Ahmed, Addl: Advocate General, Khyber Pakhtunkhwa, who was appearing in the Court on behalf of the Provincial Government, from the said person on account of taking a decision in his favour from the august Court.
3. That when insisted by the complainant to make him meet with the Law Officer, he introduced another person (an imposter) as Mr. Waqar Ahmed, Additional Advocate General to the complainant with a view to fulfill his ulterior motive, nourished in his mind.
4. That he received an amount of Rs.20,000/- (twenty thousand) from the complainant on the guarantee that neither Stay would be granted nor the case decided in favour of the Government.
5. That when the case was fixed in the august Court, he received more six (06) thousand from Munawar Khan, brother of the respondent.
6. That after the Stay was granted, he returned ten thousands (Rs.10,000/-) through Easy Paisa and then Rs.5000/- after three (03) months whereas an amount of eleven thousands (Rs.11000/-) is still outstanding against him as per complainant.
7. For the purpose of inquiry against him with reference to the above allegations, the following officers have been nominated as Inquiry Committee under rule 10(1)(a) of the ibid rules.
 - a. Mr. Muhammad Arshad Khan, Administrative Officer.
 - b. Mr. Amir Qadir, Superintendent (E & G)
8. The Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.



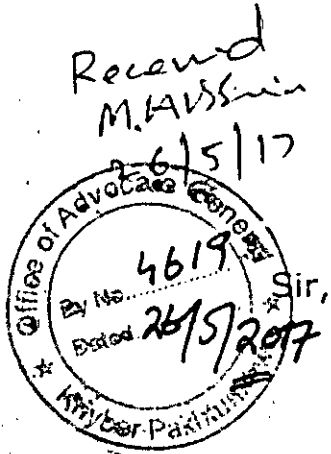
ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)

ATTESTED


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⑦

BEFORE THE DISCIPLINE COMMITTEE OFFICE OF THE
ADVOCATE GENERAL

REPLY TO CHARGE SHEET &
STATEMENT OF ALLEGATION



With due respect I beg to submit my detail reply to the Charge Sheet & statement of allegation issued to the undersigned by the worthy Advocate General KPK Peshawar on 20.05.2017.

That the undersigned had been appointed in the Advocate General Office as Naib Qasid in the year 1996, and later on promoted to the post of junior Clerk and presently working as Senior Clerk. That the undersigned has performed his duty with great zeal & honesty and since 1996 till date none of his superior had ever made any complaint against the undersigned and the undersigned has spotless service record. That on promotion from Junior Clerk to the Post of Senior Clerk the undersigned was transfer & posted in the office of Advocate General Office Bannu Bench where the undersigned performed his duty with great zeal & honesty. That during my tenure at Bannu Bench Mr. Sharifullah HVC Irrigation Department was pursuing cases on behalf of Govt. and on some case/matter an altercation took place between us and he threatened me that I will teach you lesson of this disgrace and than I was transferred from Bannu to Peshawar and in this period I have never seen him nor remain on contact

ATTESTED

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with him, recently he prepared a scandal against me for involvement in corruption case by taking revenge from me of his old altercation by making false, baseless allegation for favoring in case title govt. of KPK v/s Afsar Khan Subjudice before the August Supreme Court to which the undersigned has no concerned being working in main office of Advocate General at High Court level. The complainant has introduced my involvement in corruption case in his complaint a very honest, competent and trustworthy law office in this scandal whose integrity and honesty is above board and the undersigned has no personal relation with him therefore, accepting of illegal gratification on his behalf from the complaint does not arise but it is the result of malafide & false prosecution of the undersigned. Therefore I strongly denied & repute the charge of corruption by obtaining from the complaint Rs.20000/- for favoring of Afsar Khan in his case pending before the august Supreme Court. Moreover, I have no concern with Supreme Court, cases, the same are dealt by a separate section which are marked to the law officer by the worthy Advocate General himself therefore, the alleged guarantee as stated by the complaint in his statement of favour through Waqar Ahmed Khan. Additional Advocate General is also baseless and concocted story, another important factor of this case that in this case Mr. Mian Arshad Jan Additional Advocate General appeared on behalf of provincial govt. and he pleaded the case on behalf of provincial govt. and the Hon'ble Supreme Court disposed off the case on his arguments therefore the appearance & introduction in this case of Waqar Ahmed Khan is also false & belied as mentioned in the complaint. All the allegation leveled against the undersigned is based on malafide, ulterior

ATTESTED


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motives baseless and the result of previous altercation between the undersigned & complainant. The complainant has not paid any sort of money nor I had received Rs.20000/- from the complainant nor any amount is outstanding against the undersigned of the complainant. As such the allegation of part re-payment is also false & baseless. Therefore, I request that in the light of above explanation I may kindly be granted a chance for personal hearing to explain my position.

The complaint of complainant is false baseless based on malafide and the result of previous altercation of complainant with the undersigned. I, therefore, request to file the above complaint without further proceeding and I may be exonerated from false charges.

Applicant

Leg. no 26/5/2017
Naik Muhammad
Senior Clerk
Office of the
Advocate General
KPK Peshawar.

Dated: 26.05.2017

ATTESTED
[Signature]

'D' (10)

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Dated Peshawar, the 03 July-2017

Subject: ENQUIRY REPORT

Respected Sir,

The Competent Authority appointed the undersigned as members of an Enquiry Committee, constituted vide this Office Order bearing No. 8461-64/AG, dated 20/04/2017 (Flag-A), in order to conduct an enquiry against Mr. Naik Muhammad, Senior Clerk of this office in the matter of corruption and disguising a person as Mr. Wiqar Ahmad, Additional Advocate General to the complainant.

The enquiry was initiated following a complaint/Statement, dated 22/04/2017 of Mr. Sharifullah s/o Gul Muhammad r/o Ghazni Khel, Lakki Marwat (Flag-B). Charge Sheet and Statement of Allegations were also served upon Mr. Naik Muhammad which he received on 20/05/2017. The accused was directed to submit his written defence within seven (07) days in regard to the allegations, leveled in the Charge Sheet/Statement of Allegations. The accused official submitted his detailed reply to the Enquiry Committee on 26/05/2017 which was also placed in file as reply of the accused official (Flag-C). The allegations against the accused official are reproduced from the Charge Sheet herein below:-

1. That a person Sharifullah s/o Gul Muhammad Khan r/o Ghazni Khel, Lakki Marwat, presently serving as HVC in the Irrigation Department, Khyber Pakhtunkhwa met you in connection with a Civil Petition titled as "Govt. versus Afsar Khan" pending in the Supreme Court of Pakistan with a view to have some favour for the respondent against the Government.
2. That you demanded an amount of Rs.60,000/- in the name of Mr. Waqar Ahmed, Addl: Advocate General, Khyber Pakhtunkhwa, who was appearing in the Court on behalf of the Provincial Government, from the said person on account of taking a decision in his favour from the august Court.
3. That when insisted by complainant to make him meet with the Law Officer, you introduced another person (an imposter) as Mr. Waqar Ahmed, Additional Advocate General to the complainant with a view to fulfill your ulterior motive, nourished in your mind.
4. That you received an amount of Rs.20,000/- (twenty thousand) from the complainant on the guarantee that neither Stay would be granted nor the case decided in favour of the Government.
5. That when the case was fixed in the august Court, you received more six (06) thousand from Munawar Khan, brother of the respondent.
6. That after the Stay was granted, you returned ten thousands (Rs.10,000/-) through Easy Paisa and then Rs.5000/- after three (03) months whereas an amount of eleven thousands (Rs.11000/-) is still outstanding against you as per complainant.

ATTESTED

The undersigned (Muhammad Arshad Khan) contacted Mr. Munawar Khan, brother of the respondent in the instant case on 29/06/2017 on his Cell Number 0335-9906267 (provided by Mr. Sharifullah) from PTCL Number 091-9213833 to obtain stance/views in this regard. He told the undersigned on phone that he did not wish to pursue the case nor is he interested to invite enmity of Mr. Naik Muhammad and also refused to comment any more.

Again on 29/06/2017, Mr. Sharifullah, the complainant was contacted by the undersigned on his Cell Number 0303-8959697 with regard to the stance of Mr. Munawar Khan. Mr. Sharifullah informed me on phone that whatever he had described in his complaint are true and based on facts. He further added that as regard stance of Mr. Munawar Khan, he has been approached by Mr. Naik Muhammad to back out from the case to weaken the enquiry case against him (Mr. Naik Muhammad). Furthermore, Mr. Munawar Khan is a retired person and his purpose has been accomplished. Therefore, he is not interested to be involved in the case anymore, as informed by Mr. Sharifullah in his undertaking, dated 29/06/2017, faxed to this office.


Findings:

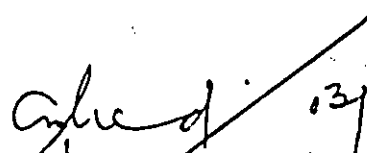
The Enquiry Committee can safely conclude the following findings:-

1. The Complainant is firm on the contents of his complaint and never retracted from his allegations.
2. The accused has also refused to accept the allegations. However, in his first reply dated 26/05/2017, he shows familiarity with the complainant as he would come to his office in government cases. But in his reply during personal hearing on 10/06/2017 he undertakes that he has not nothing to do with the complainant.
3. Mr. Munawar Khan is no more interested in the proceedings.
4. So far as the transactions of Rs. 10000/- is concerned, it has taken place between the accused and the complainant, as confirmed by the Mobilink Regional Office, Peshawar vide its correspondence dated 19/06/2017.

In view of the forgoing and after confirmation from the Mobilink Regional Office, Peshawar, the allegation of transactions of Rs. 10000/- stands proved against Mr. Naik Muhammad, the accused.

Report is submitted please.


(AMIR QADIR) 03/7/17
SUPERINTENDENT (E/G)
(ENQUIRY OFFICER)


(MUHAMMAD ARSHAD KHAN) 03/07
ADMINISTRATIVE OFFICER
(ENQUIRY OFFICER)

ATTESTER


SHOW CAUSE NOTICE

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplines) Rules, 2011, do hereby serve you, Mr. Naik Muhammad, Senior Clerk of this office, as follows.

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

I am satisfied that you have committed the misconduct as specified in rule 3 of the said rules and your such misbehavior affects discipline of the office and other staff members:

2. As a result thereof, I as competent authority, have tentatively decided to impose upon the penalty of **Removal From Service** under rule 4(b)(iii) of the said rules.
3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person?
4. If no reply to this notice is received within ten (10) days from receipt of this notice, it shall be presumed that you have nothing more to offer in your defence, in such case, action shall be taken against you accordingly.
5. A copy of the findings of the Inquiry Committee is enclosed.

ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
(COMPETENT AUTHORITY)

Endst. No. 11284-11287 /AG

Dated Peshawar, the 14/07/2017

Copy to:

1. The Administrative Officer of this office.
2. Mr. Naik Muhammad, Senior Clerk of this office.
3. Personal file.
4. Relevant files.

ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
(COMPETENT AUTHORITY)

ATTESTED

PF (13)

BEFORE THE DISCIPLINE COMMITTEE OFFICE OF THE
ADVOCATE GENERAL

REPLY TO SHOW CAUSE NOTICE DATED 14.07.2017.

With due respect I submit my detail reply to the show cause notice dated 14.07.2017 issued by the Worthy Advocate General KPK Peshawar on 14.07.2017.

That the undersigned/Applicant had been appointed in the Advocate General Office as Naib Qasid in the year 1996, and later on promoted to the post of Junior Clerk and presently working as Senior Clerk in Advocate General Office and during my service career no adverse remarks or complaint whatsoever has been received against the Applicant since his joining of duty i.e 1996, nor any single complaint or any misconduct is on the record.

That the Applicant has been promoted from the post of Junior Clerk to Senior Clerk by the worthy Advocate General to office of the Bannu Bench, where the Applicant did performed his duties with great zeal, honesty, sincerity and with full integrity and during the Bannu Bench tenure one namely Mr. Sharifullah HVC Irrigation Department was pursuing cases on behalf of Government and in the said case an altercation took place between Applicant and Sharifullah for no reason, whereby he threatened the Applicant, that he will teach me a lesson of this disgrace. Onward I was transferred from Bannu back to Advocate General Office Peshawar High Court Peshawar, thus the matter was buried and never seen him, recently he scandalized me for involvement in corruption case

ATTESTED



by taking revenge of his old altercation by making false, baseless allegations for favoring in case title "Govt of KPKVs... Afsar Khan" Subjudice before the August Supreme Court to which the undersigned/Applicant has no concerned being working in main office of Advocate General at High Court level. The complainant/Sharifullah has introduced my involvement in a case for corruption and made his complaint to the Worthy Advocate General, wherein he dragged a very honest, competent and trustworthy Additional Advocate General namely Mr. Waqar whose integrity and honesty is above board and the undersigned has no personal relation with him therefore, accepting of illegal gratification on his behalf from the complainant it does not arise in fact, it is, the result of malafide and false prosecution. Therefore, I /Applicant strongly denied and repute the charge of corruption by obtaining from the complainant Rs. 20000/- for favoring of Afsar Khan in his case pending before the August Supreme Court. Moreover, being a employee of Advocate General Office High Court Peshawar, I have no concern with Supreme Court/cases, the same were dealt by a separate section, which marked by the law officer and by the worthy Advocate General himself. Therefore, the alleged guarantee as stated by the complainant in his statement of favour, through Waqar Ahmed Khan Additional Advocate General became baseless and proved a concocted story against me, another important factor of this complaint/case that in this case basically Mr. Mian Arshad Jan Additional Advocate General has appeared on behalf of provincial Government and the Hon'ble Supreme Court disposed off the case on his arguments, therefore, the appearance and introduction in this case by Mr. Waqar Ahmed Khan Additional Advocate General is a frivolous and false and belied as mentioned in the complaint. All the allegations

ATTESTED


leveled against the Applicant/undersigned is based on malafide and on ulterior motive, baseless and the result of previous altercation between the Applicant and complainant. The complainant has not paid any sort of money nor I had received Rs. 20000/- from the complainant nor any amount is outstanding against me. As such the allegations is a part of re-payment is also false and baseless and having no footing.

The complaint is basically false, baseless and based on malafide intentions by the Complainant and this is the result of just previous altercation at Bannu Bench in past with the Complainant. Therefore, I request that in the light of above explanation, I may kindly be granted to re-join my duties as usual, without further proceedings and I may be exonerated from false charges.

Very many Thanks

With Regards

APPLICANT

Handwritten signature and date: 24-7-2017

NAIK MUHAMMAD
Senior Clerk
Office of the
Advocate General
KPK Peshawar

Dated 24.07.2017

ATTESTED
Handwritten signature

'G' (16)

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR

OFFICE ORDER

Whereas, Mr. Naik Muhammad is serving as Senior Clerk (BPS-14) in office of the Advocate General, Khyber Pakhtunkhwa, Peshawar.

And whereas, he was proceeded against departmentally on account of the allegations, as contained in the Charge Sheet as well as Statement of Allegations served upon him.

And whereas, the Inquiry Committee reported that the allegations have been proved against him.

And whereas, he was given opportunity of personal hearing on 11/08/2017 for his defence.

And whereas, during personal appearance, he did not deny the allegations and admitted his guilt, which proves that allegations leveled against him have stood proved.

Now, therefore, I, being the Competent Authority, after having considered report of the Inquiry Committee and charges on record with no denial from the accused official in reply to the charges during personal hearing, has been left with no option while exercising the powers under Ruls-04(b)(iii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but to impose major penalty of "Removal from Service" on Mr. Naik Muhammad, Senior Clerk (BPS-14) of this office with immediate effect.

ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Endst. No. 12170-93 IAG

Dated Peshawar, the 21-08-2017

Copy to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Mr. Naik Munammad, Senior Clerk.
3. Relevant File.

ATTESTED

ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

H

(17)

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Law Department, KPK, Peshawar.

**SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER
DATED 21.08.2017, WHEREBY THE APPELLANT
WAS REMOVED FROM THE SERVICE**

Respected Sir,

1. That the appellant was appointed as Naib Qasid in advocate general office in the year 1996 and later on promoted to junior clerk and then promoted as senior clerk.
2. That the appellant performed his duty with great zeal and honesty and since 1996 till date none of his superiors had ever made any complaint against the undersigned and the undersigned has spotless service record.
3. That during my tenure at Bannu Bench, Mr. Sharifullah HVC Irrigation department was pursuing cases on the behalf of Govt: matter of altercation took place between the appellant and him and then the appellant was transferred from Bannu to Peshawar, and recently he prepared a scandalous case of corruption against the appellant which is false and fabricated and only to take revenge.
4. That no regular inquiry was conducted against the appellant in which neither the statement of the appellant was recorded nor given opportunity of cross examination of the witness and despite that the appellant has hold responsible by the inquiry committee.
5. That show cause notice was served which replied by the appellant in which once again he denied the allegations.
6. That on the basis of one sided inquiry, the appellant was removed from service vide order dated 21.8.2017. (Copy of order dated 21.8.2017 is attached s Annexure-A)
7. That now appellant wants to file departmental appeal against the order dated 21.8.2017 on following grounds.

GROUND:

- A) That the impugned order dated 21.08.2017 is against the law, rules facts and material on record, therefore not tenable and liable to be set aside.

AT IESTEL

22/90

30/8/2017

- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That neither the appellant was associated with the enquiry proceedings nor has any statement of witnesses been recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant which is violation of norms of justice.
- D) That the penalty of removal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- E) That the whole action was taken against the appellant on basis of complaint which was made by Mr. Sharifullah which had tussle with the appellant and the basis of that complaint the appellant was removed from service which is against the norms of justice and fair play.
- F) That the inquiry committee in its clearly mentioned that the person namely Munawar Khan on being whom Sharifullah was compliant has no interested to peruse the case but despite that the inquiry committee hold responsible the appellant without recording the statement of the Munawar Khan which is violation of law and rules.
- G) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.

It is therefore, most humbly requested that impugned order dated 21.08.2017 may be set aside and the appellant may be reinstate with all back and consequential benefits.

Date:30/08/2017



Appellant

Naik Mohammad, Ex-Senior Clerk,
Office of Advocate General KPK,
Peshawar.

ATTESTED



(18)

VAKALAT NAMA

NO. _____/20

IN THE COURT OF SERVICE TRIBUNAL PESHAWAR

Naik Muhammad (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

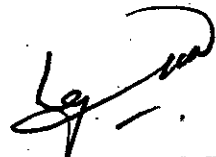
AG KPR & others (Respondent)
(Defendant)

I/We Naik Muhammad

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.


Dated _____/20



(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate


TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

PLJ 2006 SC 783
[Appellate Jurisdiction]

Present: FAQR MUHAMMAD KHOKHAR & CH. IJAZ AHMED, JJ.

TEHSIL MUNICIPAL ADMINISTRATION, FAISALABAD--Petitioner

versus

SECRETARY, LOCAL GOVERNMENT, GOVERNMENT OF THE
PUNJAB, LAHORE etc.--Respondents

Civil Petition No. 1923-L/2005, decided on 8.3.2006.

(On appeal from Judgment/Order dated 11.7.2005, passed by the Lahore
High Court, Lahore in W.P. No. 8091/2005).

(i) Punjab Local Government (Taxation) Rules, 2001--

---Rr. 3, 4, 5, 6, 7, 8 & 9 Punjab Local Government Ordinance, 2001, S. 116--
Constitution of Pakistan, 1973 Art. 185(3)--Respondents engaged in
Business of Advertisement upon being aggrieved of enhancement in
Tax/Advertisement fee--Petition allowed--Held: Assailed before High
Court on grounds Tax/Fee enhanced without following procedure
prescribed by law that fiscal notification cannot have retrospective effect--
Tax proposals were widely published in the press by inviting objections
which were also vetted by Government--Thereafter tehsil council
approved same in meeting whereafter same were notified in the Punjab
Gazette therefore Tax/Fee were legally enhanced--Further held: Points
not agitated before High Court cannot be raised before Supreme Court
consequently petition converted into appeal and allowed--Since the
notification is to take effect from the date of publication in official gazette--
The petitioner TMA would refund the revised amount of fee, if any
collected during the period prior to publication of notification in the
official gazette. [Pp. 784 & 785] A, B, C, D, F, G & H

(ii) Interpretation of Statute--

---Statute/Tax Laws cannot have retrospective effect rather the same takes
effect from the date of publication in official gazette. [P. 784] E & H

Ch. Ali Muhammad, ASC for Petitioner.

Mr. Perqaz Inayat Malik, ASC and Mr. Tanvir Ahmad, AOR for
Respondents Nos. 3 to 6.

Date of hearing : 8.3.2006.

JUDGMENT

Faqr Muhammad Khokhar, J.--The contesting Respondents
Nos. 3 to 7 filed Writ Petition No. 8091/2005 calling in question the validity

hard and fast rule for raising a presumption has been laid down therefore, in
the light of evidence available with the departmental authority, such a
presumption could be raised. The learned counsel has neither been able to
substantiate his argument nor could convince us that the finding of fact
arrived at by the Tribunal was contrary to the law and facts of the case or
was suffering from any infirmity of misreading or non-reading of evidence.

8. The contention of the learned counsel that the Tribunal being an
appellate forum against the order passed by the competent authority, was
not supposed to re-appraise the evidence and disturb the finding of fact
arrived at by the departmental authorities, has no substance. The appeal
before the Tribunal would lie both on question of law and fact and Tribunal
was under legal obligation to decide all questions of law and facts raised
before it and this Court is not an appropriate forum to go into factual
controversy and re-appraise the evidence for determination of question of
fact. This is settled principle that the finding of fact arrived at as a result of
security by a judicial forum even if erroneous, can not be gone into and
disturbed by this Court unless the same are found suffering from some
jurisdiction defect. The standard of evidence in the departmental
proceedings is certainly not the same as is required to prove a fact before the
regular Courts and the departmental authorities are also not supposed to
follow the technicalities of the law to ascertain the genuineness of a
document in the manner as is done by the Courts of general jurisdiction but
the evidence, oral or documentary, to be used for proving the charge of
misconduct, must be of legal character and admissible in law.

9. The examination of the record would reveal that the
departmental authorities having raised a presumption on the basis of
photostat letter, allegedly written by the respondent, without proving the
genuineness of his signature and the existence of original letter, have drawn
an inference of the guilt of respondent entirely on the basis of inadmissible
evidence. The learned counsel for the petitioner having realized the lacuna in
the case, has requested that petitioner may be allowed to hold fresh inquiry
into the allegation but we find that the evidence available with the
department has already been brought on record and Tribunal having made a
detail scrutiny of the evidence held that the charge was not proved against
the respondent beyond doubt, therefore, it would not be fair to permit the
petitioner to hold a fresh inquiry to fill in the lacuna in the evidence to prove
the charge. The judgment of the Service Tribunal can be challenged before
this Court under Article 212(3) of the Constitution only on a substantial
question of law of public importance and in the present case the learned
counsel, without raising such a question of law has sought interference of
this Court on a controversial question of fact.

10. In the light of foregoing discussion, we find no substance in this
petition and the same is accordingly dismissed. Leave is refused.

(Javed Rasool)

Leave refused.

be deemed to have been treated as part of wages. In plain words wages means all kinds of payments which may be covered by the definition of remuneration for the services rendered by a persona and the word remuneration has greater significance than the 'wages' which may include the payments in respect of allowances, or services rendered and such other payments. The definition of term wages in sub-section (30) of Section 2 of Social Security Ordinance, 1965 is comprehensive and exhaustive and except the occasional payment which is not considered as part of wages, all payment which are made under any rule or an instrument, contract or settlement either as a statutory or contractual obligation must be treated as part of wages unless specifically excluded from the definition of wages under the law. The concept of social security contribution is to promote the welfare of working class and the payments made and expenses incurred by an employer on welfare and well being of his employees as his obligation are included in the definition of wages therefore, the provisions of the Ordinance cannot be construed in a manner which may destroy the purpose and defeat its object. It is clear from the scheme of law that if an employer in discharge of his contractual or statutory obligation pays an amount to an employee for the services rendered by him it will be treated as part of wages in terms of Section 2(30) of Social Security Ordinance, 1965 and not withstanding the mutual understanding that such payment would not be considered as part of wages, the same would remain part of wages unless is excluded from the definition of wages under the statute. However, the payments which are made by the employers occasionally without any statutory or contractual obligation for the well being of his employees, cannot be treated as part of wages but if the similar category of payment is made as contractual or statutory obligation, it would become part of wages under the law. This Court in *Consolidated Sugar Mills vs. Sindh Employees Social Security Institution* (PLD 1991 SC 862), observed that if an employer pays any amount to an employee in discharge of his contractual or statutory obligation for the service of the employee, it will be covered by the definition of the term "wages" given in above clause (30) of Section 2 of the Ordinance notwithstanding that the parties may provide in the settlement that it is not to be treated as part of wages unless under some statutory provisions, it can be so provided. However, we may also observe that if an employer occasionally without being under a contractual or statutory obligation makes *ex gratia* payment to his employees for their well being, the same will not be covered by the above definition of the term "wages". The similar view was taken by this Court in *Brooke Bond Pakistan Ltd. vs. Sindh Employees S.S.I.* (1990 SCMR 175).

6. The appellant had not raised any other point before the High Court and leave was also granted only on sole question whether guaranteed payment was part of wages or not, therefore, we in the light of foregoing discussion hold that guaranteed payment in the present case would be

deemed as part of wages. This appeal is therefore, allowed with no order as to costs.

(Aliya Sattar Chaudhry)

Appeal allowed.

PLJ 2006 SC 777
[Appellate Jurisdiction]

Present: MUHAMMAD NAWAZ ABBASI AND M. JAVED BUTTAR, JJ.
MANAGING DIRECTOR, NBF, ISLAMABAD and 2 others--Petitioners

versus

MUHAMMAD ARIF RAJA--Respondent

Civil Petition No. 886 of 2004, decided on 21.10.2005.

(On appeal from the judgment of Federal Service Tribunal, dated 14.2.2004 passed in Appeal No. 175(R)CS/03).

(i) Constitution of Pakistan, 1973--

---Art. 212(3)--Appeal against order of Federal Service Tribunal--Held: Finding of fact arrived at as a result of scrutiny by a judicial forum even if erroneous could not be gone into and disturbed by S.C. unless the same were found suffering from some jurisdictional defect. [P. 782] A

(ii) Constitution of Pakistan, 1973--

---Art. 212(3)--Appeal against order of Federal Service Tribunal--Held: Standard of evidence in departmental proceedings is certainly not same as is required to prove a fact before the regular Courts and departmental authorities are also not supposed to follow the technicalities of law to ascertain the genuineness of a document but the evidence, oral or documentary, to be used for proving the charge of misconduct must be of legal character and admissible in law. [P. 782] B

(iii) Constitution of Pakistan, 1973--

---Art. 212(3)--Removal from Service (Special Powers) Ordinance, (XVIII of 2000)--Removal from service--FST ordering reinstatement--Assailed--Held: Departmental authorities having raised a presumption on the basis of photostat letter, allegedly written by respondent without proving the signature and existence of original letter, considered him guilty on basis of inadmissible evidence--Order was rightly set aside by the F.S.T.--Leave refused. [P. 782] C & D

Mr. Muhammad Afzal Siddiqui, ASC & Mr. Ejaz Muhammad Khan,
AOR for Petitioners.

Raja Muhammad Asghar Khan, ASC & Mr. M.A. Zaidi, AOR for
Respondent.

Date of hearing : 21.10.2005.

Alaik Muhammad
28/10/05

JUDGMENT

Muhammad Nawaz Abbasi, J.--This petition under Article 212(3) of Constitution of the Islamic Republic of Pakistan has been directed against the judgment dated 14.2.2004 passed by the Federal Service Tribunal whereby the appeal filed by the respondent against the order of his dismissal from service under Removal from Service (Special Powers) Ordinance, 2000 hereinafter called 'the Ordinance', passed by the departmental authority was set aside and he was reinstated in service.

2. The respondent, a Deputy Director in National Book Foundation an organization controlled by the Federal Government was served with show cause notice in the following manner:--

- (i) Running of a private business or as an employee of National Institute of Computer Studies, F-7 Markaz, Islamabad, without prior permission of the competent authority.
- (ii) Letter dated 11.8.1998 addressed to Mr. Simon Huang Channel Sales Manager NCS/VUF Pacific was signed by you in the capacity of Director Academic Affairs of the said business and FIR No. 374 dated 23.11.2001 was lodged by Mr. Mansoor Hasan Khan, Advocate, against you and Major (Retd.) Muhammad Aslam with Golarah Police Station Islamabad alleging that you have received 25 to 150 US dollars per student in lieu of issuing some educational certificates for different examinations. You alongwith Major (Retd.) Muhammad Aslam defaulted to pay US Dollars 7013 as per agreement as a result of which a case was registered against you under PPC 34-420/406.
- (iii) You failed to reply the charges conveyed to you in writing vide Letter No. 579HAA542 dated 2nd March, 2002, even today the 30th instant whereas your reply was supposed to be submitted by 28th February, 2002, the latest."

3. In reply, the respondent pleaded that allegations were without any foundation and denied the same as under:--

"1. The information provided to the competent authority by the complainant, M/S Khan & Associates is false, frivolous vexatious with a motive to harass me for ulterior motives.

- (I) The allegation is wrong, hence, denied.
- (II) My name has been mentioned in the said FIR by the complainant with *mala fide* intention just to harass me for ulterior motives in connivance with police of Golarah Police Station, Islamabad. Golarah Police Station, Islamabad has no jurisdiction to take cognizance of the matter because neither any of the parties resides within the territorial limits of P.S.

Golarah or any alleged occurrence took place within its jurisdiction. The investigating officer of the said police station after investigating the matter found that no criminal breach of trust was committed, therefore, Section 406 was deleted from the said FIR on 9.2.2002, hence, it is evident that I did not receive any amount so there is no question of any default of payment on my part. The allegations in the said FIR by the complainant are just a concocted story. The matter is still under inquiry by the orders of Honourable Lahore High Court, Rawalpindi Bench, Rawalpindi.

(III) It is not correct that I failed to reply the charges conveyed to me in writing vide Letter No. 579HAA542 dated 2.3.2002. I submitted my reply on 2.3.2002 and denied all the charges and also pointed out that the matter was subjudice and the Honourable High Court had directed the S.S.P, Islamabad for an inquiry into the matter.

2. As the matter is pending before the High Court and no verdict has been given by the Honourable Court and inquiry by the orders of Honourable High Court is still under process, therefore, any inference just on the basis of allegations without any proof that I am guilty of gross misconduct is against the well settled principles of natural justice.

3. Without conducting an inquiry and without taking into account the result of inquiry which is under process by the orders of Honourable Lahore High Court, Rawalpindi Bench, Rawalpindi it is not fair to take any adverse action against me.

4. The written reply is hereby submitted with in time with a request that without due course of law no adverse action may very kindly be taken against me. The detailed reply has been given in the above paras.

5. The written reply is hereby submitted with in time with a request that without due course of law no adverse action may very kindly be taken against me. The detailed reply has been given in the above paras.

It is therefore, respectfully submitted that the show-cause notice may very kindly be withdrawn.

The Inquiry Officer, however, having found the respondent guilty of the charge of involvement in the private business submitted his report as under:--

- "1. Mr. Muhammad Arif Raja did issue a letter dated 11.8.1998 to Mr. Simon Huang Channel Sales Manager NCS/VUE/Pacific under his signatures in the capacity of Director Academic

Affairs of NICS. The letter in question does not bear complete mailing address of NCS/VUE Pacific as such it appeared to be faxed resultantly original copy must have retained by Mr. Arif Raja.

2. M/S VUE corresponded with Mr. Muhammad Arif Raja on 14.12.2000, 30-3-2000, 14.4.2000 through e-mail in connection with the business transactions with M/S NICS, Islamabad which proves his business involvement.
3. Due to alleged involvement of Mr. Muhammad Arif Raja, he was nominated in FIR No. 374, dated 28.11.2001 which is still pending.
4. While in service with NBF, Mr. Arif Raja remained involved in business with foreign entity which is a clear violation of service laws. His action falls under the definition of "Misconduct", Defined in Section 2, clause (b) "Removal from Service (Special powers) Ordinance, 2000" as he neither secured prior profession of the competent authority nor NBF ever granted such permission to engage himself in a private business."
4. The competent authority, in the light of report of Inquiry Officer, having fulfilled the requirement of giving a show cause notice and personal hearing to the respondent dismissed him from service *vide* order dated 19.11.2002 which was set aside by the Service Tribunal in appeal filed by the respondent and he was directed to be reinstated in service.
5. Learned counsel for the petitioner has contended that charge against the petitioner relating to the running of private business while in the service of the organization, was proved through the oral and documentary evidence based on the correspondence made by the petitioner as Director Academic Affairs of National Institute of Computer Studies, Islamabad, with Sales Manager of Foreign business concern and perusal of Photostat copy of the letter written by the respondent and its reply, available on record, would show that the transacted business with foreign business company in dollars. In addition, learned counsel having placed reliance on the criminal case registered against the respondent at the instance of a local advocate in relation to the business affairs of the respondent with the foreign company and his statement before the Inquiry Officer to the effect that the signature on the letter in question resembled with his signatures but the same were not in his hand has contended that respondent had impliedly admitted his involvement in the private business and in absence of any evidence to the contrary, the mere denial of the genuineness of signatures on the letter in question in cross-examination, would not be sufficient to exclude it from consideration, rather a strong presumption would be raised regarding his engagement in the business.

6. Learned counsel for the respondent caveator on the other hand has contended that except the Photostat copy of the letter referred to above, no other evidence, oral or documentary, was brought on record to prove the direct or indirect involvement of the respondent in the business of his cousin and in fact he was victimized due to the personal grudge and malice of the Managing Director of National Book Foundation who being annoyed with him for his becoming party in the writ petition filed by the employees of NBF in the High Court against the merger of National Book Foundation and National Book Council. He added that incidentally, pending disposal of the writ petition, an article was published in weekly Takbeer against the Managing Director and he having gathered an impression that respondent was instrumental in publication of said article, initiated the departmental proceedings against him on the basis of fake allegation due to the personal malice and grudge. The learned counsel submitted that the Managing Director with a view to get the desired result, appointed a person of equal official status of the respondent as his inquiry officer and in the light of report submitted by him, passed the final order in a mechanical manner. In nutshell, learned counsel argued that except a Photostat copy of the letter allegedly written by the respondent to the manager of a foreign company, which is inadmissible in evidence nothing was brought on record to prove the alleged misconduct.

7. There is no cavil to the proposition that a Government servant while in service, cannot engage himself in private business and running of such a business without permission is misconduct in terms of Government Servants (Conduct) Rules, 1964. In the present case, the basic fact required to be established through the evidence like any other fact, was that in what manner, the respondent was engaged in the private business and what evidence was brought on record to prove this fact. The genuineness of the signatures of respondent on the letter allegedly written by him to be sales manager of a foreign business company was also required to be specifically proved and without proving the above facts, the charge of misconduct could not be proved. The Tribunal, having thrashed out the factual position in the light of evidence brought on the record, has held that the petitioners have not been able to prove the charge against the respondent. The careful perusal of record would show that the petitioner instead of discharging the initial burden of proving the involvement of respondent in the private business through the reliable evidence as per requirement of law, proceeded to raise a presumption of fact regarding his engagement in the business on the basis of documents not admissible in evidence. The respondent in his statement made by him on oath before the Inquiry Officer while denying the allegation of his involvement in the business stated that the signature on the letter, allegedly written by him resembled with his signatures but the same were not in his hand and learned counsel for the petitioner without satisfying us that this portion of the statement of respondent could be legally treated as his admission to the charge, submitted that since under the law no

BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No: 1358/2017

Naik Muhammad

Appellant

Versus

Govt. of Khyber Pakhtunkhwa etc

Respondents

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(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

1

**BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR**

Service Appeal No. 1358/2017

Naik Muhammad Appellant

Versus

Govt. of Khyber Pakhtunkhwa etc Respondents

REPLY ON BEHALF OF RESPONDENTS No. 1 & 2

PRELIMINARY OBJECTIONS:-

1. The Appeal is incompetent in its present form.
2. The Appellant admitted his guilt during personal hearing and did not deny the allegations mentioned in Charge Sheet and statement. On this same score alone the appeal is not maintainable.

RESPECTFULLY SHEWETH:

FACTS:-

1. Pertains to record.
2. The facts, as mentioned in para-2 are misleading because during personal hearing before the Competent Authority on 11/08/2017, the Appellant confessed the allegations mentioned in Charge Sheet / Statement of Allegations. Therefore, the allegations leveled against him stood proved. In addition, had there taken place any altercation between the appellant and the complainant, then why the appellant entered into transaction of sending Rs.10,000/- to the complainant through easy paisa on 08/11/2017 as confirmed by the Mobilink Regional Office, Peshawar. Such transaction was also confessed by the appellant during personal hearing on 08/11/2017.
3. Incorrect. A regular Enquiry Committee was constituted by the Competent Authority vide office Order bearing No. 8461-64/AG, dated 20/05/2017. The appellant was served upon Charge Sheet and Statement of Allegations. The Enquiry Committee conducted impartial enquiry against the appellant. He was also given opportunity of cross examination as is evident from his statement before the Enquiry Committee on 10/06/2017.

Incorrect. Enquiry was conducted after fulfilling all the codal formalities.

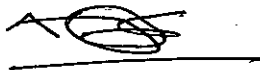
Attested
[Signature]
ADMINISTRATIVE OFFICER
Advocates General's Office
Khyber Pakhtunkhwa
Peshawar

- 2
5. The impugned order was issued after observing all the formalities as required by the rules.
 6. No comments.

GROUND:

- A. Not correct. Proviso (a) to Section 4 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 is very much clear on this point.
- B. Incorrect. He was given opportunity of personal hearing and that of cross examination but he did not wish to cross examine the complainant, as is evident from his statement, dated 10/06/2017.
- C. Incorrect. As detailed in para B above.
- D. Not correct. The complaint, dated 22/04/2017 was not anonymous and contained serious allegations of corruption against a Law Officer of this prestigious office. As such, a regular and impartial enquiry was conducted against the appellant in which the allegations leveled therein stood proved against the appellant.
- E. Evidence available on record and information provided by Mobilink Regional Office, Peshawar were enough to be taken into account. So far as interest of the Mr. Munawar Khan, friend of the complainant is concerned, to pursue the case, it holds no good as his work has accomplished, but damage and bad name to this office has been done.
- F. Incorrect. He was personally heard on 11/08/2017 by the Competent Authority, as is evident from his statement, dated 11/08/2017.
- G. Incorrect. He was treated strictly in accordance with law and the impugned order was also issued as per requirement of the relevant rules.

In view of the foregoing, it is humbly prayed that the Appeal may please be dismissed with cost.



**Advocate General
Khyber Pakhtunkhwa
(Respeti No. 2)**

Advocate General
Khyber Pakhtunkhwa
Peshawar



**Secretary to Govt: of Khyber Pakhtunkhwa
Law Department, Peshawar
(Respeti No. 1)
Secretary**

Law Parliamentary Affairs
and Human Rights Department
Govt. of Khyber Pakhtunkhwa



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 846164 /AG

Dated Peshawar, the 20-May-2017

Address: High Court Building, Peshawar.
Tel. No.091-9210119

Exchange No 9213833
Fax No. 091-9210270

OFFICE ORDER

I, the Competent Authority, under rule 10(1)(a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, hereby constitute an Inquiry Committee comprising the following officers to conduct enquiry against Mr. Naik Muhammad, Senior Clerk of this office in the matter of misconduct and corruption, as detailed in the Charge Sheet / Statement of Allegations.

1. Mr. Muhammad Arshad Khan, Administrative Officer.
2. Mr. Amir Qadir, Superintendent (E & G).

Mr. Ayaz Khan, Superintendent (Judicial) of this office is also appointed as departmental representative to assist the Inquiry Committee in this regard as provided in rule 10 (1) (c) of the said rules.

The Inquiry Committee is further directed to submit the inquiry report/findings in the matter in accordance with the provisions of rule 11 (7) of the ibid rules.

Mr. Naik Muhammad is also placed under suspension under rule 6 of the rules ibid with immediate effect.

**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)**

Endst. No. & date even

A copy is forwarded for information and necessary action to:

1. Mr. Muhammad Arshad Khan, Administrative Officer.
2. Mr. Amir Qadir, Superintendent (E & G).
3. Mr. Ayaz Khan, Superintendent (Judicial).
4. Mr. Naik Muhammad, Senior Clerk of this office.

attested
Amir Qadir
ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)**

Received today the following documents:

1. Charge Sheet
2. Statement of Allegation
3. Statement of Shamsi Ullah by Genl Naibul Khwan (05- Pages)

12015/2017

CHARGE SHEET

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, as the Competent Authority, hereby charge you, Mr. Naik Muhammad, Senior Clerk of this office, as follows:

1. That a person Sharifullah s/o Gul Muhammad Khan r/o Ghazni Khel, Lakki Marwat, presently serving as HVC in the Irrigation Department, Khyber Pakhtunkhwa met you in connection with a Civil Petition titled as "Govt. versus Afsar Khan" pending in the Supreme Court of Pakistan with a view to have some favour for the respondent against the Government.
2. That you demanded an amount of Rs.60,000/- in the name of Mr. Waqar Ahmed, Addl: Advocate General, Khyber Pakhtunkhwa, who was appearing in the Court on behalf of the Provincial Government, from the said person on account of taking a decision in his favour from the august Court.
3. That when insisted by complainant to make him meet with the Law Officer, you introduced another person (an imposter) as Mr. Waqar Ahmed, Additional Advocate General to the complainant with a view to fulfill your ulterior motive, nourished in your mind.
4. That you received an amount of Rs.20,000/- (twenty thousand) from the complainant on the guarantee that neither Stay would be granted nor the case decided in favour of the Government.
5. That when the case was fixed in the august Court, you received more six (06) thousand from Munawar Khan, brother of the respondent.
6. That after the Stay was granted, you returned ten thousands (Rs.10,000/-) through Easy Paisa and then Rs.5000/- after three (03) months whereas an amount of eleven thousands (Rs.11000/-) is still outstanding against you as per complainant.
7. That your such conduct appears to be highly objectionable and against the Efficiency and Discipline Rules as given in the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.
8. You are, therefore, required to submit your written defence within seven (07) days of the receipt of this Charge Sheet to the Inquiry Committee.
9. Your written defence, if any, should reach the Inquiry Committee within the specified period, failing which, it shall be presumed that you have accepted the charge leveled against you and have no defence to offer. In that case ex-parte action shall be taken against you as per available record, in accordance with law.
10. You are also directed to intimate as to whether you desire to be heard in person or otherwise?
11. The Statement of Allegations is also enclosed herewith.

Received

Amhed
ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

[Signature]

ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)

STATEMENT OF ALLEGATIONS

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, as the Competent Authority am of the opinion that Mr. Naik Muhammad, Senior Clerk of this office, has rendered himself liable to be proceeded against as he has committed the following acts/omissions within the meaning of rule-3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

1. That a person Sharifullah s/o Gul Muhammad Khan r/o Ghazni Khel, Lakki Marwat, presently serving as HVC in the Irrigation Department, Khyber Pakhtunkhwa met him in connection with a Civil Petition titled as "Govt. versus Afsar Khan" pending in the Supreme Court of Pakistan with a view to have some favour for the respondent against the Government.
2. That he demanded an amount of Rs.60,000/- in the name of Mr. Waqar Ahmed, Addl: Advocate General, Khyber Pakhtunkhwa, who was appearing in the Court on behalf of the Provincial Government, from the said person on account of taking a decision in his favour from the august Court.
3. That when insisted by the complainant to make him meet with the Law Officer, he introduced another person (an imposter) as Mr. Waqar Ahmed, Additional Advocate General to the complainant with a view to fulfill his ulterior motive, nourished in his mind.
4. That he received an amount of Rs.20,000/- (twenty thousand) from the complainant on the guarantee that neither Stay would be granted nor the case decided in favour of the Government.
5. That when the case was fixed in the august Court, he received more six (06) thousand from Munawar Khan, brother of the respondent.
6. That after the Stay was granted, he returned ten thousands (Rs.10,000/-) through Easy Paisa and then Rs.5000/- after three (03) months whereas an amount of eleven thousands (Rs.11000/-) is still outstanding against him as per complainant.
7. For the purpose of inquiry against him with reference to the above allegations, the following officers have been nominated as Inquiry Committee under rule 10(1)(a) of the ibid rules.
 - a. Mr. Muhammad Arshad Khan, Administrative Officer.
 - b. Mr. Amir Qadir, Superintendent (E & G)
8. The Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

Amir Qadir

Amir Qadir

ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar


ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.
(COMPETENT AUTHORITY)

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR

OFFICE ORDER

Whereas, Mr. Naik Muhammad is serving as Senior Clerk (BPS-14) in office of the Advocate General, Khyber Pakhtunkhwa, Peshawar,

And whereas, he was proceeded against departmentally on account of the allegations, as contained in the Charge Sheet as well as Statement of Allegations served upon him,

And whereas, the Inquiry Committee reported that the allegations have been proved against him,

And whereas, he was given opportunity of personal hearing on 11/08/2017 for his defence,

And whereas, during personal appearance, he did not deny the allegations and admitted his guilt, which proves that allegations leveled against him have stood proved,

Now, therefore, I, being the Competent Authority, after having considered report of the Inquiry Committee and charges on record with no denial from the accused official in reply to the charges during personal hearing, has been left with no option while exercising the powers under Ruls-04(b)(iii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but to impose major penalty of "Removal from Service" on Mr. Naik Muhammad, Senior Clerk (BPS-14) of this office with immediate effect.



ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Endst. No. 12190-92 IAG

Dated Peshawar, the 21-08-2017

Copy to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Mr. Naik Muhammad, Senior Clerk.
3. Relevant File.



ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

advised
Ambedkar
ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

بیان شرکت اللہ ولد گل محمد خان سکندری غزنی ضلع تحصیل

ملکی مروت۔ موبائل نمبر 0306-8704793 برحمت بیان کیا

میرے حکم آج پانچویں HVC ہوں اور عدالت

کے کئیوں میں جاری میری ذمہ داریوں میں شامل ہے

میں اکثر اوقات لٹا اور مالی کورٹ بیٹوں میں آگیا جانا

کرتا تھا۔ وہاں ٹیک محمد شاہی شخص ایڈووکیٹ

حیدر آہن میں دیکھ کر کئی بات تھا۔ دعوتی

امور کے سلسلے میں میری اس اکثر ملاحظت اور بات صحت

اکثر اوقات ہوا کرتی تھی اور ہوں میری اس کے ساتھ

عدلیہ وسیلے کا سلسلہ شروع ہوا۔ کچھ عرصہ بعد

مذکورہ ٹیک محمد شاہی میں واقع ایڈووکیٹ

حیدر آہن سے اس کا تبادلہ میں آہن ایڈووکیٹ

کے پاس لٹا اور ہوا۔ صہور خان جو کہ میرے ساتھ ہمارے

آہن میں ٹیک فائدہ ہے اس کے بجائی اسٹریٹان کا ایک مقدمہ

عدالت ڈسٹرکٹ ایج صاحب نے اسٹریٹان کے حق میں فیصلہ کیا

میں پر حکم نے لٹا اور مالی کورٹ کے بیٹوں میں اپیل دائر

کی جو کہ صہور مالی کورٹ سے بھی اسٹریٹان کے حق میں

برقرار رہا۔ حکم نے میری کورٹ اس فیصلے کے خلاف

(جاری ہے)

received

ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

اپنی دائرہ کی جو کے سپریم کورٹ میں اپنی اپنی عنوان حکومت

پیام انفرغان روبر سماعت تھا۔ میرے پاس جو ثابت تھا

سچی سندھان کہتا تھا اس نے مجھے التجا کی کہ ہم

غریب لوگ ہیں اور میرے بھائی کا کہیں محلہ سپریم کورٹ

میں لے گیا ہے لہذا آپ اپنے دوست نیک محمد سے کہہ دیں

کہ وہ میرے لیے مسئلہ الترتیب سے سفارش کرے کہ کہیں میں

حکومت کے حق میں سے بھی نہ ہوا اور کہیں بھی سپریم کورٹ سے

میرے بھائی کے حق میں مفادہ ہو جائے میں اور سندھان لٹاؤ

آئے اور یہاں پر نیک محمد کے دفتر میں اس سے ملاقات کی اس نے

مجھے بتایا کہ آپ فکر نہ کریں میں کہیں کسی لاڈ آفسیر کے پاس

ملا جائے تو وہ اس سے بات کر لے گا پھر نیک محمد نے مجھے ٹیلی فون

کیا کہ کہیں وقار صاحب کو مارک ہوا ہے اور اس نے بات کی ہے

لیکن وقار صاحب ساٹھ ہزار (60,000) روپے مانگ رہے ہیں میں

نے نیک محمد سے کہا کہ یہ تو بہت غریب لوگ ہیں اور انہی رقم کے لیے

انہیں زمین بیچنا پڑے گا لہذا ایسوں میں ان کے ساتھ ذرا گزرا

کریں اور دوسری بات یہ کہ مجھے وقار صاحب سے روپرو ملوا دیں

میں خود ان سے بات کروں گا۔ اس وقت میں نے نہ وقار صاحب

کو دیکھا تھا اور نہ انہیں جانتا تھا۔ نیک محمد نے کہا کہ تم لٹاؤ اگر جاؤ

میں تمہیں وقار صاحب سے ملوا دوں گا۔ جب میں لٹاؤ آیا تو نیک محمد

(جاری ہے)

ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

مجھے اے جی آفس سے باہر لے گیا اور مائی کورٹ کی بالائی منزل جو عدالتیں ہیں ان کے سامنے جو لکڑی کے بیج پڑے تھے اس پر مجھے بھی پھینکا اور ساتھ ایک شخص بیٹھا تھا اس نے کیا کہ یہ وہاں صاحب ان سے خود بات کر لوں میں نے ان سے کیا کہ سٹورٹان اور اسٹورٹان ہمارے علاقے کے بہت عزیز لوگ ہیں اور صرف ان سے بھرتی کی جا طر اور ان کا مسئلہ حل کرنے کے لیے میں آیا ہوں اور اس شخص کو میں نے (20,000) بیس ہزار روپے گین کرنیک محمد کو دیے اور کہا کہ یہ سب سے ہم اس گرانٹی پر دے رہے ہیں کہ کس میں نہ کوئی سٹے ہو گا اور نہ ہلکے کے حق میں مفاد ہو گا۔ وہ شخص جب اپنے آپ کو وہاں صاحب ظاہر کر رہا تھا اس نے مجھے کہا کہ آپ بے فکر رہیں اس میں ہی طرح ہو گا جس طرح آپ چاہتے ہیں۔ جب نارنج سٹورٹون کی تو ہم نے نیک محمد کو کال کی اس نے کہا کہ آپ بے فکر ہو جائیں سٹے ہیں ہو گا اور میں یہ بھی کیا کہ وکیل کرنے کی ضرورت نہیں کیونکہ اس نے وہاں صاحب سے بات کی ہے جب نارنج آئی تو اسٹورٹان خود پیش ہو ا مگر سب سے کورٹ سے نکلے سٹے کو مل گیا۔ اس دوران اس نے سٹورٹان سے مالہ کر کے نارنج سے پندرہ چھ ہزار (16,000) روپے مزید بھی لیے تھے جب عدالت سے سٹے ہو گیا تو میں نیک محمد کے سٹے لے گیا اور کہا کہ تم نے کیا تھا کہ سٹے ہیں ہو گا تو پھر سٹے کیسے ہو گا اس نے کہا

جاری ہے

کہ آپ فکر نہ کریں آخری صفحہ آپ کے حق میں ہو گا۔ امیر خان نے
 نے کہیں جو ستر فلکری بنے کے لیے کیا تھا تو اس کے حق میں سسٹن
 کورٹ بنوں اور صدر بنوں پہنچتے اس کے حق میں کیا تھا
 محکمے نے اسے مافی کورٹ کے حکم پر اسے فلکس - I میں
 بھرنی کہا جو جس پر وہ راہی نہ تھا۔ سپریم کورٹ میں
 محکمے نے امیر خان فلکس ون کا آرڈر کر دیا اور سپریم کورٹ
 نے کہا کہ اسے فلکری نہ بنانے اور فلکس ون کا آرڈر ہیج
 ہے امیر خان نے ٹوکری جو اس میں کی اور وہ لوگ مجھ
 سے گلہ کرتے رہے کہ میں نے اور میرے دوست بینک محمد
 نے ہمارے ساتھ دھوکہ کیا اور مجھے کہتے تھے کہ تمھاری بات
 وفا صاحب نے نہیں سہی بلکہ یہ سب ایک دھوکہ ہے میں نے
 بینک محمد سے رقم کی والی کا مطالبہ کیا اس نے مجھے دس
 ہزار روپے بذریعہ اپنی پیسہ بھیج دے اور اس کے تقریباً
 تین ماہ بعد پانچ ہزار چھتے چھتے چھتے لگتے 11,000 ہزار
 روپے ابھانک اس پر یقیناً ہیں۔ پھر 2017-3-28 کو وفا صاحب
 بیٹھا بیچ میں ایک کہیں کے سب سے آئے تھے اس دن پہلی بار میں
 نے ان کو دیکھا تو مجھے یہہ چلا کہ بینک محمد نے مجھے کسی اور شخص
 سے سوا کر کیا تھا کہ یہ وفا صاحب ہیں پھر میں نے آپ سے شکایت
 کی اور آپ نے مجھ سے وعدہ لیا کہ جب آپ مجھے بلائیں گے تو



(جاری ہے)

attested
 signed
 ADMINISTRATIVE OFFICER
 Advocate General's Office
 Khyber Pakhtunkhwa
 Peshawar

سید بجا اور آون گاج میں اپنا بیان اپنی مہر سے

اور اللہ تعالیٰ کو حاضر و ناظر جان کر صحیح بیان کیا۔



(RIGHT HAND THUMB IMPRESSION)

Muhammad
(محمد اللہ)

22/4/2017



(LEFT HAND THUMB IMPRESSION)

ولد گل محمد خان
سنہ غزنی جنیل بلک پورٹ

موبائل نمبر 03068704793
شناختی کارڈ نمبر 5-0319246-11201
22-4-2017

(وقار احمد خان)

ایڈیشنل ایڈووکیٹ جنرل
غزنی ضلع خواتین اور

attested

signed

ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

بیان از نیک محمد سینہ کلرک - دفتر ایڈووکیٹ جنرل جیہڑ پٹوخواہ
 بیان کیا ہے کہ شریفی اللہ جس نے میرے خلاف 017-4-28
 کو دفتر میں جو شکایت لگائی ہے میں اس سے بالکل
 انکاری ہوں۔ اور یہ جھوٹ کا بیگزہ ہے جس میں قرآن
 پیر ہاتھ رکھتا ہوں۔ اور میں اپنے صفائی میں صرف یہ
 صفائی پیش کرتا ہوں۔ اور قسم اٹھانے کیلئے تیار ہوں۔ کہ میرا اس
 شریفی اللہ خانی بندے سے کوئی سروکار نہیں۔ اور یہ اپنے بیان
 میں اس لئے جھوٹے ہیں۔ کہ یہ اہل حدیٰ منور خان کو سامنے
 لانے سے بھی انکاری ہے۔ میں اس بارے میں نہ کوئی جرح
 کرنا ہوں اور نہ میں کوئی گواہ پیش کرتا ہوں۔

Para 2
 of appeal
 dated 10/6/17

نیک محمد سینہ کلرک

دفتر ایڈووکیٹ جنرل
 جیہڑ پٹوخواہ

10-6-2017
 منظور

[Signature]
 10/6/17
 محمد اشرف خان
 (ایڈووکیٹ جنرل)

[Signature]

[Signature]

ADMINISTRATIVE OFFICER
 Advocate General's Office
 Khyber Pakhtunkhwa
 Peshawar

[Signature]
 10/6/17
 اسیر عابد
 (ایڈووکیٹ جنرل)

To

The Administrative Officer,
Advocate General Office,
Khyber Pakhtunkhwa, Peshawar.

C:

PROVISION OF RECORD OF EASY PAISA, DATED 08/11/2016

Reference your letter No. 10287/AG, dated 17/06/2017 on
the subject noted above.

The required information are as under:-

- 1. Sender Name: Naik Muhammad
- 2. CNIC No. 17301-3287687-3
- 3. Sender Cell No. 03005858990



[Handwritten Signature]
19/6/17

[Handwritten Signature]

[Handwritten Signature]

ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

letter
17/6/2017
replied through ↗



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 11904-05 /AG

Dated Peshawar, the 08-Aug-2017

Address: High Court Building, Peshawar.
Tel. No.091-9210119

Exchange No 9213833
Fax No. 091-9210270

To

Mr. Naik Muhammad,
Senior Clerk (Now placed under suspension),
House No.3, Anis Abad No. 3, Dalazak Road, Peshawar.

Subject: **PERSONAL HEARING BEFORE THE COMPETENT AUTHORITY**

Reference your reply to the final show cause notice, dated 24/07/2017.

You are advised to appear before the Competent Authority on 11/08/2017 at 10:00 AM in office of the Advocate General, Khyber Pakhtunkhwa, Peshawar.

[Signature]
(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER
(ENQUIRY OFFICER)

Endst. No. & date even

Copy to Mr. Amir Qadir, Superintendent-cum-2nd member of the Enquiry Committee.

[Signature]
[Signature]
9-8-2017

[Signature]
ADMINISTRATIVE OFFICER
(ENQUIRY OFFICER)

[Signature]

Appeared for personal hearing today before the Cd. AG: KP/Competent Authority. dt: 11/08/2017.

[Signature]
ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar

[Signature]
11-8-2017

(3) The other terms and conditions of service of the Chairman and members shall be such as may be determined by the Governor.]

4. Appeal to Tribunals.---Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him ¹[or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter:

Provided that--

- (a) where an appeal, review or a representation to a departmental authority as provided under the Khyber Pakhtunkhwa Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred; ²[....]
- (b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining--
 - (i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade; or
 - (ii) the quantum of departmental punishment or penalty imposed on a civil servant as a result of a departmental inquiry, except where the penalty imposed is dismissal from service, removal from service or compulsory retirement ³[; and]
- ⁴[(c) no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1st July, 1969]

Explanation.---In this section, "departmental authority" means any authority, other than a Tribunal, which is competent to make an order in respect of any of the terms and conditions of service of civil servants.

5. Constitution of Benches.---(1) There may be constituted one or more Benches, each consisting of--

- (a) The Chairman alone; or

1. I inserted by Khyber Pakhtunkhwa No. IV of 1974.
 2. The word "and" deleted by Khyber Pakhtunkhwa Act No. IX of 1994.
 3. The full stop replaced by semicolon and the word "and" inserted by Khyber Pakhtunkhwa Act No. IX of 1974
 4. Clause "(c) substituted by Khyber Pakhtunkhwa Act No. IX of 1974.

17
20-1-19

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1358/2017

Naik Muhammad

Vs Advocate General-KPK etc

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-2) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Para-1 of the appeal is admitted correct by the respondents as service record is already in custody of the respondent department.
- 2 Incorrect and misleading while Para-2 of the appeal is correct as mentioned in the appeal of the appellant moreover the confession of offence by the appellant is totally incorrect, the appellant never made confession in personal hearing. It is further added that the statement of star witness has not been recorded. So the inquiry conducted is against the mandate of provision of E&D, Rules 2011.
- 3 Incorrect. While Para-2 of the appeal is correct as mentioned in the main appeal of the appellant moreover neither witness was examined before the appellant nor the opportunity of cross examination was provided to the appellant which is not maintainable in the eyes of law. So, the penalty leveled against the appellant may be set aside on this score alone.
- 4 Incorrect. While Para-4 of the appeal is correct.
- 5 Incorrect and misleading while Para-5 of the appeal is correct.

6 Needs no comments.

GROUND:


- A) Incorrect. The act of respondent department is against the law fact, norms of justice and material on record therefore not tenable. Moreover that not deciding the departmental appeal within the statutory period of 90 days is violation of superior courts judgment.
- B) Incorrect. While Para-B of the appeal is correct. Moreover as explained in Para-2.
- C) Incorrect. While Para-C of the appeal is correct.
- D) Incorrect. While Para-D of the appeal is correct. Moreover as explained in above Para.
- E) Incorrect. While Para-E of the appeal is correct. Moreover the record annexed with the comments of the respondent department is not a conclusive proof which not shows that the appellent sent money to the complainant which also not shows that how much money was sent.
- F) Incorrect. While Para-F of the appeal is correct.
- G) Incorrect. While Para-G of the appeal is correct.
- H) Legal.

It is, therefore, most humbly prayed that the appeal of appellent may kindly be accepted as prayed for.

APPELLANT

Naik Muhammad

Through:

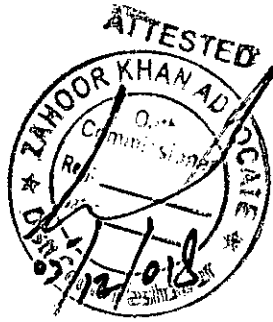

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT


(S. NOMAN ALI SHAH BUKHARI)
ADVPCATE HIGH CO

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able tribunal.

[Handwritten Signature]
DEPONENT





**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 1568 /ST
Dated: 09/08 /2021

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

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


To

The Advocate General,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1358/2017, MR. NAIK MUHAMMAD.

I am directed to forward herewith a certified copy of Judgement dated
29.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR