

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1153/2019

Date of Institution ... 17.09.2019

Date of Decision ... 12.10.2021

Aurangzeb Kashmiri, Ex-Junior Clerk, Office of the Executive Engineer, Building Division Mardan, R/o Sheikh Maltoon, Street No. 15, House No. S-326, Mardan.
... (Appellant)

VERSUS

The Secretary Govt. of Khyber Pakhtunkhwa, Communication and Works Department, Civil Secretariat, Peshawar and three others.

... (Respondents)

MR. KHUSH DIL KHAN
Advocate

... For Appellant

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

... For respondents

ROZINA REHMAN
ATIQ-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the case are

that the appellant was employee of respondents department holding the post of junior clerk. The appellant was also officer bearer of APCA, Khyber Pakhtunkhwa, holding the position of President in the Cabinet. The appellant was transferred vide order dated 15-03-2107 to Dir Lower, against which he filed departmental appeal dated 28-03-2017, but the same remained unattended. A declaratory suit was also filed by the appellant against the impugned transfer order in the court of civil judge, which was admitted and status quo was granted, but the appellant sought withdrawal of the same and filed service appeal No. 85/2019 in this Tribunal by

challenging his transfer order, but in the meanwhile the impugned order of imposition of major penalty of compulsory retirement from service was passed vide order dated 14-05-2019, hence his service appeal was dismissed being infructuous. The appellant filed departmental appeal dated 20-05-2019, which was not responded within the statutory period of 90 days, hence the instant service appeal with prayers that the impugned order dated 14-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the allegations leveled against the appellant are baseless, does not constitute mis-conduct entailing major penalty of compulsory retirement, hence the impugned order is not sustainable and liable to be set aside; that the appellant has never defied his transfer order intentionally or deliberately, but on the basis of status quo granted by the Court of Civil Judge, he retained the charge of his duty, which he regularly performed and was paid monthly salaries, thus the disciplinary proceedings were malafiedly initiated against the appellant for ulterior motive and he was politically victimized for his union activities being the president of APCA, therefore, the impugned order is unfair, malafidies, without lawful authority and liable to be set aside; that major penalty was imposed upon the appellant without holding a regular inquiry and the apex court in plethora of judgment have held that regular inquiry is must before imposition of major penalty; that the charges against the appellant are not so grave as to impose major penalty of compulsory retirement, which is harsh and does not commensurate with nature of the charges; that charge sheet/statement of allegation was served upon appellant on 14-11-2017, while show cause notice was served on 29-11-2018, whereas impugned order was passed and issued on 14-05-2019 with inordinate delay, without legal justification, thus the proceedings and the subsequent impugned order has no legal sanctity and has lost its venom and sting; that the appellant was condemned unheard, the impugned order was passed at back of the appellant, no proper opportunity of defense was provided to the appellant, as the allegation pertaining to factual

controversies which could only be resolved through regular inquiry, which however was not done in case of the appellant, thus the impugned order is illegal and not sustainable in the eye of law; that respondent No 1 has not acted in accordance with law and rules and unlawfully retained the departmental appeal of appellant without any decision which is unfair and unjust.

03. Learned Deputy District Attorney for respondents has contended that being civil servant, the appellant is supposed to serve anywhere within or outside the province, as enunciated in Section-10 of Civil Servant Act, 1973; that the appellant was relieved of his duty with effect from 28-03-2017, but he did not report arrival at the place of his transfer; that due to non-compliance of transfer orders, the appellant was issued charge sheet/statement of allegations by appointing an inquiry officer vide order dated 14-11-2017; upon completion of inquiry, show cause notice was served upon the appellant, to which he responded, but his reply was not found convincing, hence taking a lenient view and keeping in view his length of service, the appellant was awarded with major punishment of compulsory retirement from service.

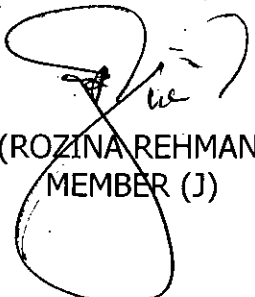
04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant obtained status quo against his transfer order dated 15-03-2017 and retained his place of posting as well as continued to receive his salaries as well. He withdrew the suit with the understanding that his transfer order will be cancelled by the respondents as per their commitments made with him, but instead, the respondents initiated disciplinary proceedings against him after withdrawal of declaratory suit. Placed on record is a fact finding inquiry, which fully supports the stance of the appellant regarding his retention on his previous post, which shows that the appellant did not disobey orders of his transfer, but stayed at his post due to orders of court. We have found that no regular inquiry was conducted against the appellant, nor he was afforded proper opportunity of defense, rather piecemeal proceedings have been conducted against


him, as charge sheet/statement of allegations has been served upon him on 14-11-2017, whereas show cause notice was served upon him on 29-11-2018 after lapse of almost one year, whereas impugned order was passed on 14-05-2019 after delay of another 6 months, which shows malafide on part of the respondents, as the appellant was representing his co-employees through All Pakistan Clerk Association, hence respondents had developed a grudge towards the appellant for his activities for welfare of the clerk community, which ultimately resulted into award of major punishment of compulsory retirement from service, which however was not warranted. It otherwise appears a harsh penalty, even if the appellant had not complied such transfer order without aide of verdict of a court.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 14-05-2019 is set aside and the appellant stands re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
12.10.2021



(ROZINA REHMAN)
MEMBER (J)



(ATIQ UR REHMAN WAZIR)
MEMBER (E)

ORDER


12.10.2021

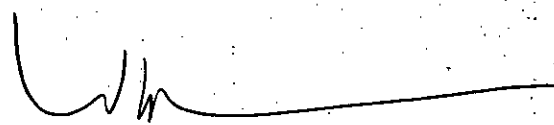
Mr. Khush Dil Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Haseeb Ullah Superintendent for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 14-05-2019 is set aside and the appellant stands re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

12.10.2021

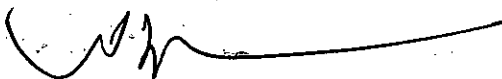

(ROZINA REHMAN)
MEMBER (J)


(ATIQ UR REHMAN WAZIR)
MEMBER (E)

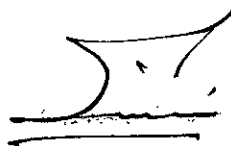
08.09.2021

Appellant alongwith his counsel Mr. Khushdil Khan, Advocate, present. Mr. Riaz Gul Admin Officer alongwith Mr. Muhammad Rasheed Deputy District Attorney for the respondents present.

Learned Deputy District Attorney sought adjournment on the ground that the brief of the instant appeal was handed over to him very lately, therefore, he has not made preparation for arguments. Learned counsel for the appellant having no objection on the adjournment. Adjourned. To come up for arguments before the D.B on 16.09.2021.



(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


16.09.2021

Appellant in person present. Mr. Riaz Gul, Admin Officer alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is ill. Adjourned. To come up for arguments before the D.B on 12.10.2021.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

28.4.2021


Due to COVID-19 the case is adjourned
to 30.8.2021 for SW hearing.

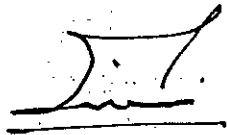

Rasheed

30.08.2021

Appellant alongwith his counsel Mr. Khush Dil Khan, Advocate, present. Mr. Riaz Gul, Admin Officer alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that due to some engagements, he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 08.09.2021.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

01.02.2021

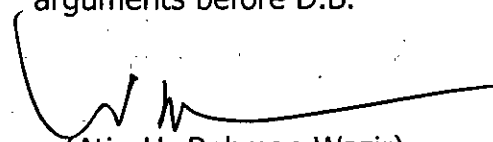
Due to summer vacation, case is adjourned to 01.02.2021 for the same as before

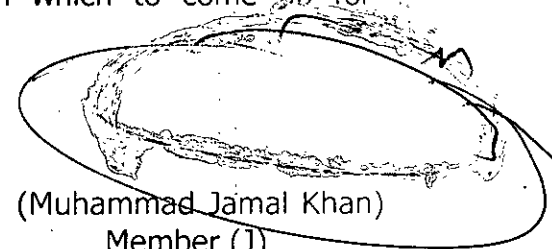

Reader

01.02.2021

Appellant is present in person. Muhammad Rasheed learned Deputy District Attorney alongwith Riaz Admin Officer for respondents present.

Appellant informed the bench that his counsel could not attend the Tribunal today due to a blockade of the road held by the procession out pouring flow from the suburban flanks of the city and requested for adjournment. The request is acceded to and the appeal is adjourned to 15.03.2021. On which to come up for arguments before D.B.


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

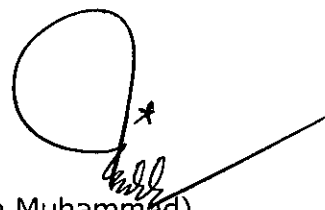

(Muhammad Jamal Khan)
Member (J)

15.03.2021

Appellant in person and Mr. Muhammad Rashid, DDA alongwith Riaz Gul, Admin Officer for the respondents present.

Former requests for adjournment as his learned counsel is not available today.

Adjourned to 28.04.2021 before D.B.


(Mian Muhammad)
Member(E)


Chairman

05.08.2020 Due to summer vacation case to come up for the same on
07.10.2020 before D.B.

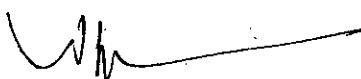


Reader

07.10.2020 Appellant present through counsel.

Zara Tajwar learned Deputy District Attorney for
respondents present.

Former requests for adjournment. Adjourned. To come up
for arguments on 28.10.2020 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

28.10.2020 Proper D.B is on Tour, therefore, the case is
adjourned for the same on 30.12.2020 before D.B.



Reader

06.02.2020 Counsel for the appellant and Addl. AG alongwith Muhammad Zaib, Assistant for the respondents present.

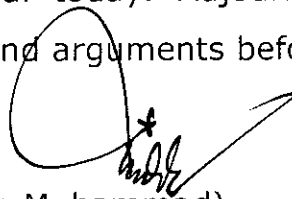
Representative of respondents has furnished comments, which are placed on record. To come up for rejoinder and arguments on 01.04.2020 before the D.B.


(Ahmad Hassan)
Member

01.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 09.06.2020 for same as before.


Reader

09.06.2020 Clerk to counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Riaz Gul, Admin Officer for the respondents present. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is ill and cannot attend the Tribunal today. Adjourned to 05.08.2020 for rejoinder, if any, and arguments before D.B.


(Mian Muhammad)
Member


(M. Amin Khan Kundi)
Member

23.10.2019

Counsel for appellant present.

Contends that major penalty of compulsory retirement was imposed upon the appellant through order dated 14.05.2019, while no regular inquiry was ever conducted against him. The impugned order was result of a fact finding/formal inquiry wherein the appellant was not provided with opportunity to put forth his defense. Further contends that the allegation, as contained in the impugned order, regarding non-compliance of posting order dated 15.03.2017 was also misconceived. Initially, an order of maintenance of status-quo was passed by a civil court on 28.03.2017 which continued till withdrawal of the said suit by the appellant. Subsequently, a service appeal was preferred to Service Tribunal wherein also the order of transfer of the appellant was suspended. On that score as well the impugned order is not sustainable.

The appeal in hand, is admitted to regular hearing subject to all just exceptions in view of available record and arguments of learned counsel. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/ comments on 23.12.2019 before S.B.


Chairman

23.12.2019

Appellant in person present. Addl: AG alongwith Mr. Naqeebullah, SDO and Mr. M. Zeb, Assistant for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 06.02.2020 before S.B.


Member

Appellant Deposited
Security & Process Fee

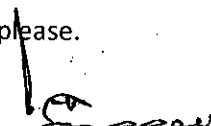

8/11/19

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1153/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/09/2019	<p>The appeal of Mr. Aurangzeb Kashmiri presented today by Mr. Khushdil Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 17/9/19</p>
2-	18/09/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/10/19</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1153 /2019

Aurangzeb Kashmiri,
Ex-Junior Clerk,
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan.....Appellant.

Versus

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat,
Peshawar and others.....Respondents.

INDEX

S.N	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal.			1-5
2.	Copy of office order whereby appellant was transferred from the office of respondent No.3 to the office of Executive Engineer, C&W Division, Dir Lower.	15-03-2017	A	0-6
3.	Copy of departmental appeal against the impugned transfer order before the respondent No.1.	28-03-2017	B	7-8
4.	Copy of the plaint with status quo order.	17-04-2017	C	9-12
5.	Copy of Order Sheet of this Hon'ble Tribunal whereby the Service Appeal No. 85 / 2019 was dismissed as infructuous.	31-05-2019	D	0-13
6.	Copy of the covering letter with the copies of charge sheet and statement of allegations communicated to appellant by the respondent No.2	14-11-2017	E	14-17
7.	Copy of reply to Charge Sheet by the appellant.	20-11-2017	F	18-19
8.	Copy of covering letter with copies of Show Cause Notice and inquiry report.	29-11-2018	G	20-25
9.	Copy of reply to Show Cause Notice by the appellant.	06-12-2018	H	26-27
10.	Copy of the impugned order whereby appellant was compulsory retired with immediate effect.	14-05-2019	I	0-28
11.	Copy of departmental appeal with registered receipt.	20-05-2019	J	29-32

Through

Appellant

Khush Dil Khan
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 091-2213445

Dated: 14 / 09 / 2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1153 /2019

Aurangzeb Kashmiri,
Ex-Junior Clerk,
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan.....Appellant.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 1763

Dated 17-9-2019

Versus

1. The Secretary,
Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat, Peshawar.
2. The Chief Engineer (Centre),
Communication and Works Department,
Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer,
Communication and Works Department,
Building Division, Mardan.
4. Mr. Muhammad Israr,
Inquiry Officer / The then Executive Engineer,
Communication and Works Department,
Building Division-II, Peshawar.....Respondents.

Filed to-day

Registrar

17/9/19

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 14-05-2019 THEREBY IMPOSED MAJOR PENALTY OF COMPULSORY RETIREMENT "UPON APPELLANT" WITH IMMEDIATE EFFECT UNDER RULE 14(5)(ii) OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (Efficiency and Discipline) RULES, 2011 AGAINST WHICH HE FILED DEPARTMENTAL APPEAL UNDER REGISTERED POST DATED 20-05-2019 BUT THE SAME WAS NOT DISPOSED OFF WITHIN STATUTORY PERIOD OF 90 DAYS .

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:

1. That appellant was employee of the respondent department holding the post of Junior Clerk, working in the office of respondent No.3. In addition, he is also an office bearer of APCA, Khyber Pakhtunkhwa holding the position of President in the Cabinet.
2. That vide order dated 15-03-2017 (**Annexure-A**), appellant was transferred to the office of Executive Engineer, C&W Division, Dir Lower against which he filed departmental appeal before the respondent No. 1 on 28-03-2017 but the same was remained unattended. Copy of departmental appeal is attached as **Annexure-B**.

It is pertinent to mention that a declaratory suit against the impugned transfer order was also filed by the appellant in the Court of Civil Judge-VII, Mardan, which was admitted and order of status quo was passed. Later on, the appellant has withdrawn the same and filed a Service Appeal No. 85 / 2019 in this Hon'ble Tribunal therein he challenged the impugned orders of his transfer but when instant impugned order of his compulsory retirement was passed then the Service Appeal No. 85 / 2019 was dismissed being infectious vide order dated 31st May, 2019. Copies of plaint with status quo order attached as **Annexure-C** and Order Sheet dated 31-05-2019 attached as **Annexure-D**.

3. That during pendency of the above referred proceedings, the respondent No.2 had issued letter dated 14-11-2017 vide No. 75-E/1030/CEC/C&WD thereby served Charge Sheet with statement of allegations upon appellant to which he submitted

his reply on 20-11-2017. Copy of the covering letter with copies of Charge Sheet and statement of allegations are attached as **Annexure-E** and copy of reply is attached as **Annexure-F**.

4. That appellant was served with a Show Cause Notice vide covering letter No. 75-E/408/CEC/C&WD dated 29-11-2018 based on facts finding inquiry report conducted by respondent No.4 to which he submitted a detailed reply on 06-12-2018. Copies of covering letter with copies of Show Cause Notice and Inquiry Report are attached as **Annexure-G** and copy of reply attached as **Annexure-H**.
5. That without considering the reply of appellant and other material on the record, respondent No.2 acted in arbitrary manner and imposed major penalty of compulsory retirement upon the appellant with immediate effect vide order dated 14-05-2019 (**Annexure-I**) which was unjustified and tainted with malafide intention therefore, the same was challenged through Departmental Appeal dated 20-05-2019 under registered post by the appellant before the respondent No.1 but the same was not disposed of within statutory period of 90 days. Copy of departmental appeal with registered receipt attached as **Annexure-J**.

Hence the present appeal is submitted on the following amongst other **grounds:-**

- A. That the alleged allegations are baseless and unjustified, do not constitute misconduct entailing major penalty of compulsory retirement therefore the impugned order is not sustainable and liable to be set aside.

- B. The appellant is an obedient employee of the department and he never defied his transfer order intentionally, deliberately but on the basis of the status quo order of the Court of Civil Judge-VII, Mardan and he retained the charge of his duty which he regularly performed and paid monthly salaries. Thus the disciplinary proceedings were malafidely initiated against the appellant for ulterior motive and he was politically victimized for his union activities being the President of APCA. Therefore, the impugned order is unfair, malafide, without lawful authority and liable to be set aside.
- C. That in the case of appellant, a fact finding inquiry was conducted by the inquiry officer and on the basis of which a Show Cause Notice was issued to him and major penalty of compulsory retirement was awarded to him without holding regular inquiry. The fact finding inquiry can never be substituted thus the impugned order is illegal, without lawful authority, of no legal effect and liable to be set aside.
- D. That the charges against the appellant are not so grave as to impose major penalty of compulsory retirement which is harsh and do not commensurate with the nature of charges which is not sustainable under the law and rules on the subject and liable to be set aside.
- E. That in the case of appellant Charge Sheet was issued on 14-11-2017 while Show Cause Notice served upon him on 29-11-2018 and impugned order was passed and issued on 14-05-2019 with inordinate delay, without legal justification thus the proceedings and the subsequent impugned order has no legal sanctity and has lost its venom and sting.

- F. That the appellant was condemned unheard, the impugned order was passed at his back, no proper opportunity of defence was provided to him as the allegations pertaining to factual controversies which could only be resolved through regular inquiry which is not done in this case thus the impugned order is illegal and not sustainable being violative of principle of natural justice.
- G. That the respondent No.1 has not acted in accordance with law and rules on subject and unlawfully retained the departmental appeal of appellant without any decision which is unfair and unjust.

It is, therefore, humbly prayed that on acceptance of this service appeal, the disciplinary proceedings against the appellant may kindly be declared illegal, defective, malafide, without lawful authority and against the principle of natural justice as well the impugned order dated 14-05-2019 based on such defective proceedings may graciously be set aside and appellant to be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 20 / 09 / 2019



Office Of The Chief Engineer (Centre)
Communication & Works Department
Khyber Pakhtunkhwa Peshawar

No. 220-E / 1717 / CEC / C&WD

Dated Peshawar the 15/03/2017

Ammed A^o 12
268

15-3-2017

OFFICE ORDER

The following posting/ transfer of Junior Clerks in the C&W Department, is hereby ordered, in the public interest, with immediate effect :-

Sl. No.	Name	From	To	Remarks
1.	Mr. Saleemur Rehman (Junior Clerk) ✓	O/O SE C&W Circle Mardan	Junior Clerk O/O XEN C&W Division Dir Upper	Existing Vacancy
2.	Mr. Aurangzeb-V (Junior Clerk)	Junior Clerk O/O XEN Building Division Mardan	Junior Clerk O/O XEN C&W Division Dir Lower	Vice # 3
3.	Mr. Aimal Khan (Junior Clerk) ✓	Junior Clerk O/O XEN C&W Division Dir Lower	Junior Clerk O/O XEN Building Division Mardan	Vice # 2

CHIEF ENGINEER (CENTRE)

Copy forwarded to the:-

- 1) Chief Engineer (North) C&W Department Peshawar.
- 2) Superintending Engineers C&W Circle Mardan / Dir Lower.
- 3) Executive Engineer Building Division Mardan.
- 4) Executive Engineers C&W Division Dir Lower / Dir Upper.
- 5) District Accounts Officers District Mardan / Dir Lower / Dir Upper.
- 6) Officials Concerned.

CHIEF ENGINEER (CENTRE)

Baier

ATTESTED

3-E

File

17/3

order/sent 15-3-2017

Dept/ndw/Asst. Tech/Eng 22-3-2017

do seetry 28-3-2017 = Relive

Stay Court 28-3-2017

2-9-2017

6-9-2017

E-m. Directorate 17-10-2017 Case with Nov
14-11-2017

Diary No. 1454
16-3-2017

D.E.
A.O.
B.S.A.

7

To

Appeal

Annex: B
P. 7

The ~~Secretary~~ Secretary (C&W)
Khyber Pakhtunkhwa Peshawar

Subject: Representation/Departmental Appeal Against Order No.220-E/1717/CEC/C&WD Peshawar Dated 15-03-2017 Issued by your good Office vide which the petitioner/appellant transferred to office of XEN C & W Division Dir Lower is incorrect against law, facts and policy and in effective upon the rights of appellant and the said order is liable to be set-aside to the extent of appellant and the appellant be allowed to continue his services in his previous place of posting i.e office of XEN Building Division Mardan

Respectfully Sheweth,

The appellant humbly submits as under:-

1. That the appellant is posted in C&W Department as Junior Clerk in the office of XEN C & W Building Division Mardan in own pay scale against the post of Senior Clerk.
2. That the appellant is performing his duties to the entire satisfaction of his superiors and the service record of the appellant is spotless and blameless.
3. That the appellant is not involved in any kind of Departmental proceeding and it was to the utter shock and dismay when the appellant received the impugned order dated 15-03-2017. (Copy is attached as Annex A)
4. That the transfer order of the appellant is liable to set-aside on the following grounds.

GROUNDS

- A. That the appellant is the President of All Pakistan Clerks Association (APCA) Khyber Pakhtunkhwa hence the appellant is office bearer of an Association and as per notification of the Provincial Govt the office bearer cannot be transferred. (Copy of notification is attached as Annex B)
- B. That the wife of the appellant Mst Insha Bibi is posted in Education Department Mardan as Qaria BPS-16 at Govt Girls Centennial Model School Canal Road Mardan. (Copy of service certificate is attached as Annex C)
- C. That as per spouse policy it is mandatory, that both the official (spouse) will perform their duties at the same station hence the

ATTESTED

transfer order of the appellant is liable to set-aside. (Copy of spouse policy is attached as Annex D)

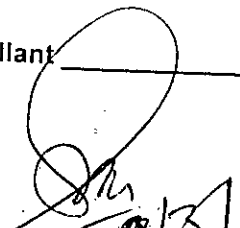
P. 8

- D. That the impugned transfer order is based on malafide intention which is evident from the said order.
- E. That as per PIFRA rules and ground realities and record there is no vacant post of Junior Clerk in C & W Building Division Mardan hence the official mentioned at Sr.No.3 Namely Aimal Khan Junior Clerk is wrongly adjusted against the post of appellant just to harras the appellant.
- F. That the impugned order is liable to be set-aside just to disturb the Association Activities of the appellant who has good reputation all over the province.

Therefore it is humbly prayed that by acceptance of the instant appeal the impugned order may kindly be set-aside to the extent of appellant and issue order to continue his services in his previous place of posting i.e. office of XEN C & W Building Division Mardan.

Dated 28-03-2017

Appellant


Aurangzeb
(Provincial Resident)
APCA Khyber
Pakhtunkhwa

28/3/2017

 **ATTESTED**

گورال صاحب اصغر علی گورال در سی سالگی
 گورال دیوانی گورال

Annex: P. 9



شعبہ کسٹمری سٹیشننگ سیکشن ایف بی ایف
 XEN ایف بی ایف سٹیشننگ ڈویژن گورال (مدعی)

دعا! گورال صاحب اصغر علی گورال در سی سالگی
 صاحب اصغر علی گورال (مدعی) سے شہادت لیا گیا ہے کہ
 XEN ایف بی ایف سٹیشننگ ڈویژن گورال (مدعی) سے
 گورال صاحب اصغر علی گورال در سی سالگی
 (مدعی)

دعویٰ استقرار حق میں جو گورال صاحب اصغر علی گورال در سی سالگی
 No 220 E / 17/17/17
 CEC/C 17/17

1935 عہدہ - خلاف قانون، الفاظ - خلاف اصول فطری الفاظ میں ہر اور ناموں سے
 1017
 ان حقوق مدعی پر عہدہ خور اور لاکھ ہے۔ حکم نامہ مذکورہ قابل منسوخ ہے

فصل میں عہدہ میں ہر مدعی خلاف اصول فطری الفاظ میں ہر اور ناموں سے
 ب۔ صورت میں استقامتی نامہ مدعی جو ان خلاف مدعی علی کہ حکم نامہ مذکورہ

میں عہدہ اور کہنے مدعی سے علی کہنے - تنخواہ رکھنے اور مدعی کے چھوٹے
 استقامتی کارروائی میں خلاف مدعی کہنے سے تا کہ عہدہ منسوخ دیا جائے

بنیاد دعویٰ و بندہ گورال
 انڈیا گورال گورال
 مدعی علی گورال انڈیا گورال گورال
 گورال گورال گورال

مستند گورال گورال گورال
 15/- 200/-
 15/- 200/-

ATTESTED
 گورال گورال گورال
 500/- 200/-

P T-O

A.P. 9



شورنگ

قد علما علیہ السلام اللہ تعالیٰ مودعہ ۱۷۱۴۱۱۷

کے لئے توجہ دینا ہے۔ نیز دعووں کا یہ

تلف ہے۔ در فوائسہ ہم امتنا میں مشورہ پیش ہے۔

حالات میں جوں کے توجہ دینا ہے۔

CJ - ۱۱۱ - Mardan

Asghar Ali Salarzai
Cj-VII/JM Mardan

ATTESTED

دعویٰ عدلیہ جسٹس کے خلاف ہے

- 1 - یہ کہ عدلیہ قلم عدلیہ علیہ ³ جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے
- 2 - یہ کہ عدلیہ علیہ عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے
- 3 - یہ کہ عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے

- 4 - یہ کہ عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے
- 5 - یہ کہ عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے

- 6 - یہ کہ عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے
- 7 - یہ کہ عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے

8 - یہ کہ عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے

نہ ہے۔ مگر عدلیہ کے خلاف جو عدلیہ کو سزا دے گا اس میں ملکر لکھنا ہے

ATTESTED

P. 11
۶۔ کہہ دے کہ وہ علی بن ابی طالب کے نام سے ہے اور اس کا نام ہے
مذکورہ ہے لیکن وہ نہیں ہے بلکہ اس کا نام ہے
سے خود نام لکھیں اور لکھیں یہی ہے۔

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HILAL SHAH
ADVOCATE HIGH COURT
Peshawar at Mardan

بہان لکھا
اس کا نام ہے اور اس کا نام ہے اور اس کا نام ہے
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ATTESTED

659
29/3/17

گورنمنٹ ڈپارٹمنٹ

اورنگزیب گمشدہ (ت) صیف اظہار و شکر

دعویٰ اشتقاقی و مندرجہ

درخواست حکیم احتشام بخش تانہری صاحب مدظلہ کے لئے
تعداد صدیوں سے عملدرآمد کرنے - خواہ لکھنے - جاری لکھنے
آمد و نثر اشتقاقی کاروائی کرنے سے تعلق نہ ہو
منع و باز رہے

صفی علی

- 1 - یہ کہ سرکاری ڈپارٹمنٹ کے ساتھ درج اس وقت ہوا گیا ہے
 - 2 - یہ کہ سرکاری ڈپارٹمنٹ کے ساتھ ہونے والے کاموں کی کاپیوں کی اطلاع ہے
 - 3 - یہ کہ ان کے ساتھ سرکاری ڈپارٹمنٹ کے ساتھ ہے
 - 4 - یہ کہ ان کے ساتھ سرکاری ڈپارٹمنٹ کے ساتھ ہے
- تاریخ تصدیق ہوگی -

اورنگزیب گمشدہ
نذیر احمد صاحب

ATTESTED

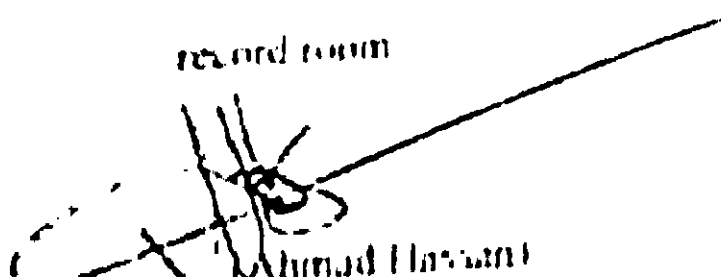
Annex: D
P. 13

Learned counsel for the appellant, Mr. Usman Chani learned District Attorney alongwith Riaz Gul Admin Officer for official respondents and learned counsel for private respondent No.6 present

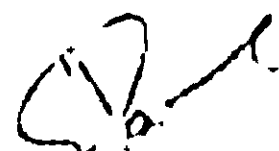
Representative of official respondents furnished office order dated 14.05.2019 whereby major penalty of compulsory retirement has been imposed upon the appellant.

Learned counsel for the appellant, while referring to the office order dated 14.05.2019 mentioned above, seeks withdrawal of the present service appeal

In view of above, the present service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room



Ahmad Hussian
Member



(Muhammad Hamid Mughal
Member

ANNOUNCED
11.05.2019

ATTESTED


31.05.2019
Riaz Gul
Admin Officer
11.05.2019
Ahmad Hussian
Member

14-05-2019
214-11-2017

6-2 Years/years

Annex E

P. 14



OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

No. 75-E / 1030 / CEC / C&WD

Dated Peshawar the 14 / 11 / 2017

To

Engr. Muhammad Israr ✓
Executive Engineer
Building Division-II Peshawar

Subject:- INQUIRY AGAINST MR. AURANGZEB JUNIOR CLERK

Please refer to the subject noted above and to state that the undersigned (Competent Authority) has been pleased to appoint you as Inquiry Officer to conduct formal inquiry under the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011, against Mr. Aurangzeb Junior Clerk O/O Executive Engineer Building Division Mardan.

Copies of Charge Sheet/ Statement of Allegations duly signed are enclosed herewith in duplicate, with the request to serve these upon the above named official and initiate proceedings against him under the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011, and submit report complete in all respects to this office within a week time positively, so as to proceed further in the matter.

DA/As above:

CHIEF ENGINEER (CENTRE)

Copy to the: -

1. Chief Engineer (North) C&W Department Peshawar.
2. Superintending Engineer C&W Circle Mardan.
3. Executive Engineer Building Division Mardan alongwith a copy of Charge Sheet & Statement of Allegation for his office record and reference.
4. Mr. Aurangzeb, Junior Clerk O/O XEN Building Division Mardan alongwith a copy of Charge Sheet & Statement of Allegations, with the direction to appear before the Inquiry Officer on the date & time fixed by him.

DA
for SE W. 324

ATTESTED

CHIEF ENGINEER (CENTRE)

P. 15



2. For the purpose of Inquiry against the said accused with reference to the above allegations, an Inquiry Officer/Inquiry Committee, consisting of the following, is constituted under Rule-10(1)(a) of the ibid rules:-

Muhammad Israr XEN Bldg Division-II

3. The Inquiry Officer/ 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 days of the receipt of this order, recommendations or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/Inquiry Committee.


CHIEF ENGINEER (CENTRE)
C&W DEPARTMENT PESHAWAR
(COMPETENT AUTHORITY)


ATTESTED

To

The Chief Engineer (Centre),
Communication & Works Department,
Khyber Pakhtunkhwa, Peshawar.

Through Inquiry Officer.

**Sub:- REPLY TO CHARGE SHEET WITH STATEMENT OF
ALLEGATION VIDE LETTER DATED 14-11-2017.**

Sir,

In reference your letter No. 75-E/1030/CEC/C&WD dated 14-11-2017 I herewith submit the requisite reply on following facts and grounds for your kind consideration.

1. That I am Senior Junior Clerk having excellent service record and also office bearer of Clerk Association (APCA) holding the position of President.
2. That without cogent reason, I have been transferred from the office of Executive Engineer, C&W Division Mardan to the Office of Executive Engineer, C&W Division Dir Lower which was prompted by political influence which I had challenged in the Court of Civil Judge-VII, Mardan and status quo was granted. Meanwhile I also have filed departmental representation before the Secretary, C&W Department, Khyber Pakhtunkhwa. During this period I was regularly performed my duties and receiving monthly salaries but then your office issued to me Charge Sheet with statement of allegation containing of no specific charges which is herewith denied.
3. That the alleged allegations are baseless and do not constitute misconduct and based on political victimization on account of my association activities which is not sustainable. Moreover I am an obedient employee of the department and never refused the impugned transfer order deliberately but on the basis of order of status quo of the Court I retained the charge of my seat.

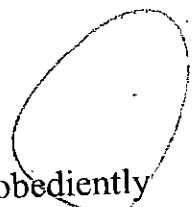
ATTESTED

P.19

It is therefore, humbly prayed that on acceptance of this reply the Charge Sheet with Statement of allegations may kindly be withdrawn in the interest of justice.

Thanks

Yours obediently


Aurangzeb Kashmiri,
Junior Clerk,
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan

Dated: 20/11/2017




ATTESTED



CHARGE SHEET

P-16

1. I, Engr. Muhammad Ayub, Chief Engineer (Centre) C&W Department Peshawar, as competent authority hereby charge you, Mr. Aurangzeb, Junior Clerk O/O Executive Engineer Building Division Mardan as follows:-

- i. That on your transfer from the O/O XEN Building Division Mardan to the O/O XEN C&W Division Dir Lower vide order No.220-E/1717/CEC/C&WD dated 15/03/2017, you failed to report departure and assume the duties at the place of your posting.
- ii. You ~~were~~ officially relieved from the post at Mardan with effect from 28/03/2017 as per memo of XEN No.1739/3-E dated 28/03/2017, but failed to join duties at Dir lower as such.
- iii. Instead to comply with the orders, you filed a Civil Suit in the Civil Court against the Chief Engineer (North) C&WD to implead him as Respondent/ Defendant attent onally and got status-quo from the Court till the next date 17/04/2017 as fixed with the simple wording in Urdu as: -

مدعا علیہ بالا کی اطلاع یا بی مور نہ 17/04/2017 کے لئے کرائی جائے۔
نیز درخواستی کا پی لٹ ہے۔ اور در و است حکم امتناعی شمولد شس ہے۔
حالات جوں کے توں رہے۔

-sd- (In English)
Asghar Ali Salarzai
CJ-VII/JM Mardan

And has given a wrong impression to XEN of stay orders and with the manipulation of office hands, continued to received salaries.

2. By reasons of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Disciplinary) Rules, 2011, and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

ATTESTED



DISCIPLINARY ACTION

P-17

1. I, Engr. Muhammad Ayub, Chief Engineer (Centre) C&W Department Peshawar, as competent authority, am of the opinion that Mr. Aurangzeb, Junior Clerk O/O Executive Engineer Building Division Mardan has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011.

STATEMENT OF ALLEGATIONS

- i. That on his transfer from the O/O XEN Building Division Mardan to the O/O XEN C&W Division Dir Lower vide order No.220-E/1717/CEC/C&WD dated 15/03/2017, he failed to report departure and assume the duties at the place of his posting.
- ii. He was officially relieved from the post at Mardan with effect from 28/03/2017 as per memo of XEN No.1739/3-E dated 28/03/2017, but failed to join duties at Dir lower as such.
- iii. Instead to comply with the orders, he filed a Civil Suit in the Civil Court against the Chief Engineer (North) C&WD to implead him as Responder/ Defendant attentionally and got status-quo from the Court till the next date 17/04/2017 as fixed with the simple wording in Urdu as:-

درخواستیہ بالا کی اطلاع یا اپنی مورخہ 17/04/2017 کے لئے کرائی جائے۔
نیز ڈیوٹی کا پلٹ ہے۔ اور درخواست حکم استعفیٰ منظور نہیں ہے۔
حالات جوں کے توں رہے۔

-sd- (In English)
Asghar Ali Salarzai
CJ-VII/JM Mardan

And has given a wrong impression to XEN of stay orders and with the manipulation of office hands; continued to received salaries.

ATTESTED

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PUKHTUNKHWA PESHAWAR

No. 75-E / 408 / CEC / C&WD

Dated Peshawar the 29 / 11 / 2018

To

The Executive Engineer
C&W Building Division Mardan

Annex. "G"

P.20

SUBJECT: SHOW CAUSE NOTICE

A Show Cause Notice regarding misconduct in the name of Aurangzeb Kashmiri Junior Clerk is sent herewith for further delivery and service upon the said official.

Please ensure that reply of the said Junior Clerk to the Show Cause Notice shall be obtained and submitted to this office at the earliest with in the stipulated period.

DA As Above

CHIEF ENGINEER (CENTRE)

Copy to Mr. Aurangzeb Kashmiri Junior Clerk C/O Executive Engineer
C&W Building Division Mardan for information and needful.

A copy of the Show Cause Notice is also attached.

DA As Above

CHIEF ENGINEER (CENTRE)

ATTESTED

عمران خان ولد اورنگزیب

SHOW CAUSE NOTICE

P. 21

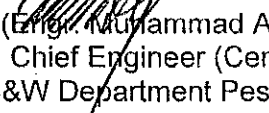
I, Engr. Muhammad Ayub Chief Engineer (Centre) C&W Department Peshawar, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, do hereby serve you, Mr. Aurangzeb Kashmiri, Junior Clerk O/O Executive Engineer C&W Division Dir Lower 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 findings and recommendations of the Inquiry Officer, the material on record and other connected papers including your defence before the inquiry officer..

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

(b) guilty of misconduct

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Compulsory Retirement under Rule-4 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 seven (07) days or not more than fifteen (15) days of its delivery, it shall be presumed that you have no defence to put in, and in that case an ex-parte action shall be taken against you.
5. A copy of the findings of the Inquiry Officer is enclosed.


(Engr. Muhammad Ayub)
Chief Engineer (Centre)
C&W Department Peshawar
(Competent Authority)z

ATTESTED


INQUIRY

P.22

Subject:- INQUIRY AGAINST MR. AURANGZEB JUNIOR CLERK

Introduction:

The Chief Engineer (Centre) C&W Department Khyber Pakhtunkhwa, has appointed the undersigned as inquiry officer vide letter No.75-E/2030/CEC/C&WD, dated 14.11.2017 to conduct formal inquiry against Mr. Aurangzeb Junior Clerk o/o the Executive Engineer Building Division Mardan as per allegations against him.

Statement of Allegations:

- i. That on his transfer from o/o Executive Engineer Division Mardan to the o/o Executive Engineer C&W Division Dir Lower vide order No.220-E/1717/CEC/C&WD, dated 15.03.2017, he failed to report departure and assume the duties at the place of his posting.
- ii. He was officially relieved from the post at Mardan with effect from 28/03/2017 as per memo of Executive Engineer No.1739/3-E dated.28/03/2017, but failed to join duties at Dir lower as such.
- iii. Instead to comply with the orders, he filed a civil suit in Civil Court against the Chief Engineer (North) C&WD to implead him as respondent/ Defendant attentionally and got status-quo from the Court till the next date 17/04/2017.

Proceeding:

Vide this office letter No.1115/4-E, dated 22/11/2017(Annexure-A), Mr. Aurangzeb Kashmiri Junior Clerk in the office of Executive Engineer Building Division Mardan has directed to submit written reply of allegations against him alongwith complete record. They were reminded again and again telephonically. In response they submitted the reply vide letter No.1039/3-E, dated 12/06/2018(Annexure-B):

The reply of this office letter No.1245/1-H, dated 21/12/2017, to Executive Engineer Building Division Mardan for change proforma and salary statement was responded vide letter No.1152/3-E, dated 29/06/2018 (Annexure-C)..Final record received to this office on 02.10.2018 (Copy attached).

ATTESTED

CHIEF ENGINEER (CENTRE)

17/11/2017
H.C.

H.C.

P-23

The Detail of record is as under.

- i. Appeal in Court of Civil Judge-VII, Mardan.
- ii. Court proceeding dated 17.11.2017. (Un-attested).
- iii. Letter of APCA.
- iv. Relieving letter of Executive Engineer Mardan.
- v. Office order of Transfer.
- vi. Office bearer of Association rules letter.
- vii. Notification of APCA, where Mr. Aurangzeb appointed as president of APCA body.
- viii. Change Proforma of April 2017.
- ix. Salary Slip of May 2018.

Fact Finding:

The record revealed that the official, Mr. Aurangzeb Junior Clerk was transferred to office of the Executive Engineer C&W Division Dir, vide posting transfer order No.17-17/CEC/C&WD, dated 13/03/2017 (Annexure-D).

In response to this order the accused official appealed to Chief Engineer Centre (Annexure-E) to set aside the order, allowing him to continue his service in the office of Executive Engineer C&W Dir Mardan. 29/3/17

On 29/03/2017, the official filed a suit against Chief Engineer C&W and Chief Engineer (North), in the Court of Civil judge-VII, where status-quo was granted (Annexure-F). 17/4/2017

1. On 02.09.2017, Chief Minister KPK, directed Secretary C&W with remarks "Please cancelled the transfer" (Annexure-G), which has been communicated officially to Secretary C&W Department KPK, vide letter No. SOVI/CMS/KPK/3-1/2017, dated 06.09.2017 (Annexure-H).
2. On 17.10.2017, the official /plaintiff in person withdrew his suit (Conditionally) and the suit was dismissed as withdrawn. The Court proceeding and application of official is attached (Annexure-I).

ATTESSED

CHIEF ENGINEER (CENTRE)

FE SX/16/389

H.c

4/22

3. The Executive Engineer Building Division Mardan, submitted his statement vide his office letter No. 1739/3-E, dated 28/03/2017, that the accused official has been relieved on 28/03/2017 (Annexure-J).

4. The Salary of the accused official was stopped by Executive Engineer C&WD Building Mardan through change proforma w.e.f 01/04/2017 (Annexure-K).

As revealed from the record and statement of the accused, the accused official failed to submit the departure from the office Executive Engineer Building Division Mardan, on the following grounds.

1. The wife of the official is serving in Education Department in the same District and under the spouse policy "Effort should be made to post both at one station (Rule is attached as Annexure-L).
2. Being President of APCA (Annexure-M), he should not be transferred for the year for which he is office bearer as such (Annexure-N).
3. Status-quo order issued from the Court of Civil Judge-VII Mardan till 17/04/2017 (Annexure-O).
4. Cancellation of the transfer order from the Chief Minister KPK (Annexure-P).

In response to the telephonic message, the Executive Engineer Building Division Mardan submitted his statement vide letter No. 1739/3-E, dated 28/03/2017, that he has been relieved w.e.f 28/03/2017, but physically he was in the office of Executive Engineer Building Division Mardan and has been receiving salary from the office/District.

The change proforma has no token register No. (T.R.No.) and also has not been pursued by Executive Engineer Building Division Mardan to stop salary. Also the case was not pursued in the Court of Civil Judge-VII Mardan properly and not properly attended on due date, which need to be enquired from Executive Engineer Building Division Mardan.

ATTESTED

CHIEF ENGINEER (CENTRE)

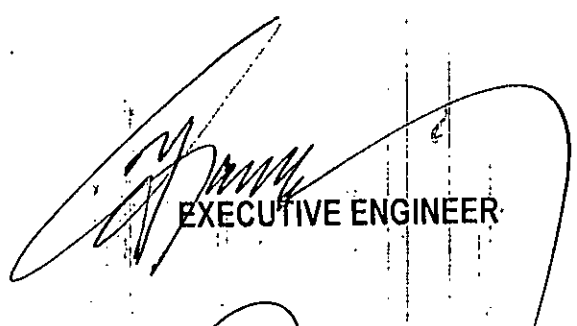
FE 5226 389
H.C.
4/2

P25

Conclusion:-

The official has been transferred to the office of Executive Engineer C&W Division Dir Lower Vide Order No.220-E/1717/CEC/C&WD dated 15-03-2017. Status-quo was granted by Civil Judge VII District Mardan dated 17/04/2017 upto 17/10/2017. The plaintiff then submitted an application for the withdrawal of suit, mentioning that the high up has promised for cancellation of the transfer order and the court accordingly dismissed the suit as withdrawn.

However the official could not produce any cancellation order of the competent authority and the official failed to report departure and assume the duty at his place of posting after 17/10/2017.


EXECUTIVE ENGINEER
ATTESTED

PL SL NO 334

H.C.

CHIEF ENGINEER (CENTRE)

To

The Chief Engineer (Centre),
Communication & Works Department,
Khyber Pakhtunkhwa, Peshawar.

Annex H
P 26

Sub:- REPLY TO SHOW CAUSE NOTICE.

Sir,

In reference your letter No. 75-E/408/CEC/C&WD dated 29-11-2018. I herewith submit the requisite reply on following facts and grounds for your kind consideration.

1. That I am Senior Junior Clerk having excellent service record and also office bearer of Clerk Association (APCA) holding the position of President.
2. That the alleged allegations are baseless and unjustified, do not constitute misconduct entailing major penalty of compulsory retirement which is also not commensurate with the charges and harsh.
3. That no regular inquiry has been conducted in my case, the inquiry officer carried out fact finding inquiry on the basis of which this Show Cause Notice was issued to me which has no legal sanctity as the fact finding inquiry is not substitute of regular inquiry therefore, the entire proceeding is defective and not sustainable.
4. That in my this case Charge Sheet was issued to me on 14-11-2017 while after lapse of one year, the fact finding inquiry was conducted on the basis of which this impugned Show Cause Notice was issued to me on 29-11-2018 with inordinate delay without cogent reason thus it has lost its venom and sting.
5. That I was condemned unheard and no proper opportunity was provided to me to defend my case which is against the principle of natural justice.

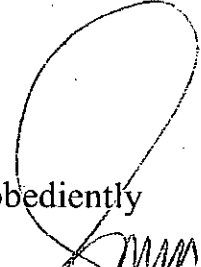
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P-27

It is therefore, humbly prayed that on acceptance of this reply the Charge Sheet with Statement of allegations may kindly be withdrawn in the interest of justice.

Thanks

Yours obediently


Aurangzeb Kashmiri,
Junior Clerk, 6/12/2018
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan

Dated: 06/12/2018


ATTESTED



Annex: 1 P-28
OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PUKHTUNKHWA PESHAWAR

No. 75-E / 454 / CEC / C&WD

Dated Peshawar the 14 / 05 / 2019

OFFICE ORDER

1. WHEREAS, Mr. Aurangzeb Kashmiri Junior Clerk (BS-11) O/O Executive Engineer C&W Building Division Mardan was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the Non-Compliance of posting orders dated 15/03/2017 from Building Division Mardan to C&W Division Dir Lower and as such guilty of Mis-Conduct.
2. AND WHEREAS, for the said act of misconduct he was served charge sheet/ statement of allegations and Show Cause Notice as well.
3. AND WHEREAS, Mr. Muhammad Israr, the then Executive Engineer Building Division-II Peshawar was appointed as Inquiry Officer who conducted the enquiry and submitted his report.
4. NOW THEREFORE, the undersigned being Competent Authority after having considered the charges, material on record, inquiry report of the Inquiry Officer, explanation of the official concerned, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants' (Efficiency & Discipline) Rules, 2011, imposed major penalty of "Compulsory Retirement" upon Mr. Aurangzeb Kashmiri Junior Clerk (BS-11) C&W Department with immediate effect.


CHIEF ENGINEER (CENTRE)

Copy forwarded to the:-

1. Chief Engineer (North) C&W Department Peshawar.
2. Superintending Engineers C&W Circle Mardan/ Dir Lower.
3. Executive Engineer C&W Building Division Mardan.
4. Executive Engineer C&W Division Dir Lower.
5. District Accounts Officers, District Mardan/ Dir Lower.
6. Mr. Aurangzeb Kashmiri C/O XEN C&W Building Division Mardan.


ATTESTED


CHIEF ENGINEER (CENTRE)

To

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat, Peshawar.

20-5-19

Hashid
20-5-19

Amex: J

Through **PROPER CHANNEL**

Subject: **DEPARTMENTAL APPEAL UNDER RULE 3 OF THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 READ WITH SECTION 22 OF THE KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 AGAINST THE IMPUGNED ORDER DATED 14-05-2019 PASSED BY THE CHIEF ENGINEER (CENTRE) THEREBY AWARDED MAJOR PENALTY OF COMPULSORY RETIREMENT UPON APPELLANT WITH IMMEDIATE EFFECT.**

P.29

Respected Sir,

1. That I / appellant am the employee of your department holding the post of Junior Clerk working in the office of Executive Engineer C&W Building Division, Mardan. In addition I am also an office bearer of APCA Khyber Pakhtunkhwa holding the position of President in the Cabinet.
2. That on 15-03-2017 I / appellant was transferred to the Office of Executive Engineer C&W Division, Dir Lower from the Building Division, Mardan. Since this transfer order was premature, prompted by political interference and also violative of the policy on subject therefore, I immediately filed a declaratory suit with the temporary injunction in the court of Civil Judge Mardan in addition to departmental appeal. The Learned Civil Judge has entertained the case and also granted **status quo** in my favour vide order dated 17-04-2017 which was later on withdrawn by me on the assurance of the Executive Engineer.

ATTESTED

Om

3. That meanwhile the cases of Junior Clerks including me were processed by the authority of Building Division, Mardan for further promotion to the posts of Senior Clerk. When the order of promotees was issued on 03-10-2018 therein I not only ignored of due promotion on merit but also my earlier transfer order was restored.

B 30

4. That I/ appellant filed a fresh civil suit against that impugned order dated 03-10-2018 in the competent court of law which was stayed by the Hon'ble Court. Subsequently on the question of jurisdiction the suit was returned to me on 17-01-2019. Here the statutory period of 90 days of disposal of my departmental appeal was also completed so immediately filed Service Appeal No: 85 of 2019 and the impugned order of my transfer was also suspended on 08-02-2019.

5. That during the stay period granted by the competent court of law, the Chief Engineer (Centre) C&W department, Khyber Pakhtunkhwa issued an **office order dated 14-05-2019** thereby I was compulsory retired on the ground of non compliance of posting order dated 15-03-2017.

Hence this departmental appeal is submitted on the following grounds;

A. That the Chief Engineer (Centre) has misconceived my case and passed the impugned order in harsh manner and in violation of the law and rules for the reasons;

i. That when the transfer order was suspended by competent court of law then the question of non compliance does not arise and that is why I was allowed working in the original place of work and also paid monthly salaries regularly.

ii. That the authority mentioned in the impugned order that an inquiry was conducted but no such regular inquiry was



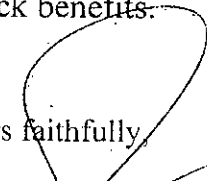
ATTESTED

carried out and if any inquiry conducted then the same made at my back.

P-31

- iii. That I am obedient servant and my performance is excellent but due to political grudges with the sitting Provincial Minister it was done against me which is not fair, not sustainable and liable to be set aside.
- iv. That the alleged non compliance of transfer order does not constitute the offence of misconduct.
- v. That I condemned unheard and the impugned order passed at my back without providing a fair opportunity of defence and even personal hearing was also not given to me which is illegal and against the principal of natural justice.
- vi. That the punishment is harsh and not commensurate with the charge and malafidely awarded the major penalty which is not warranted and liable to be set aside.

It is therefore humbly prayed that on acceptance of this departmental appeal, the impugned order of my compulsory retirement may kindly be cancelled and reinstated me in service with all back benefits.

Yours faithfully,

Aurangzeb Khatmiri
Junior Clerk, 2015/2019
Office of the Executive Engineer,
Building Division Mardan,
R/o Sheikh Maltoon, Street No.15,
House No. S-326, Mardan.

Dated: 20/5/2019

ATTESTED

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No. 1242

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Received a registered
addressed to Chitwan Date-Stamp 88/12 Rs. Ps.

Initials of Receiving Officer Chitwan *Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before when necessary

Insured for Rs. (in figures) 100 (in words) One hundred

If insured: Insurance fee Rs. 0 Ps. 0 Weight 100 Kilo Grams
Name and address of sender Chitwan

ATTESTED

WAKALAT NAMA

IN THE COURT OF

12-P. Senior Tribunal

Aurangzeb Kashmiri
Ex. junior clerk of X&I Cr. Mander Appellant(s)/Petitioner(s)

VERSUS

Mr Secretary C&W Deptt
12-P. Bahara + others Respondent(s)

I/We Aurangzeb Kashmiri do hereby appoint
Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion
Off: Tel: 091-2213445

Signature of Executants

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No-1153/2019

1. **Aurangzeb Kashmiri**
R/O Sheikh Maltoon,
Street # -15, House No-S/326
Mardan.

(Ex-Junior Clerk of Building Division Mardan).....**Appellant**

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa Communication & Works Deptt: Peshawar.
2. The Chief Engineer (Centre) C&W Deptt: Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineers, Communication & Works Deptt., Building Division Mardan.
4. Mr. Muhammad Israr, Inquiry officer/The then Executive Engineer, C&W Deptt:
Building Division-II, Peshawar**Respondents**

COMMENTS OF OFFICIAL RESPONDENTS

PRELIMINARY OBJECTION

1. The Appellant has got no cause of action to file the instant Appeal.
2. This Hon'able Tribunal has got no jurisdiction in such cases to entertain the appeal
3. The Appellant has not come to the Tribunal with clean hands.
4. The Appeal is malafide and and not maintainable in the present form.
5. The Appeal is bad for Mis-Joinder & Non-Joinder of Necessary parties.
6. The Appeal is frivolous and vexatious, the respondent's have right to receive special cost.
7. That the appeal is badly time barred.

ON FACTS

1. Correct to the extent, appellant was Civil Servant and employee of C&W Deptt, but it is incorrectly stated working in the O/O Respdt-3. Actually the appellant was posted-out from Mardan and transferred to the O/O XEN C&W Division: Dir Lower vide posting order No. 220-E/1717/CEC/C&WD dated 15/03/2017, as annexed-A with Service Appeal, at page-6. However being Civil Servant, he has to serve any where within or outside the Province in any post under the Federal Govt, or any Provincial Govt of KP as annunciated in the Section-10, Civil Servant Act, 1973. And how it can be said he was Office Bearer of APCA holding position as its so called President, when the competent Authority in Administrative Deptt: has not announced/scheduled the proper Election. On the others, appellant was relieved of his duties by the XEN Building Division Mardan w.e.f 28-03-2017 as per informatory letter No. 1739/3-E dated 28-03-2017 (Annexed-I).
2. The same as replied in para-1 above. So far the stance of appellant, filed departmental appeal to Respdt-1 (Secretary C&W) was not processed through proper channel, might sent directly without adopting procedure. For the rest of statement as held in this para-2 of Service Appeal, not needs to be commented

having no weightage. The appellant himself stated that Appeal/Suit with-drawn and has been declared infructious by the Civil Courts and then by this Honorable Service Tribunal on 31-05-2019.


3. Correct to the extent that due to non-compliance of transfer/posting order as expressed above, appellant was issued a Charge Sheet and Statement of Allegation, by appointment of an Inquiry officer vide Memo dated 14/11/2017. Instead to have submitted reply to the inquiry officer, appellant managed his reply addressing to Respdt-2 (Chief Engineer).
4. Correct to the extent that after the completion of Inquiry since conducted against him, the Respdt-2 (Chief Engineer Centre) as competent Authority issued a Show Cause Notice upon the appellant vide memo dated 29/11/2018 (since Annexed-G) with the Service Appeal, where the Appellant was informed of the penalty, tentatively decided "Compulsory Retirement".
5. Being Competent Authority, after having all Pros and cons of the case proceedings, replies of the accused, the Respondent-2 (Chief Engineer) retired the accused "Compulsory" under rule-14 (5) (ii) of the Khyber Pakhtunkhwa, Civil Servants (Efficiency and Discipline) Rules, 2011 keeping in view his length of Service in order to avail Pansionary Benefits etc. Although the appellant preferred APPEAL before Respondent-1 (Secretary C&W) either in person or by Registered post, not considered and filed having no validity or sound grounds thereto.

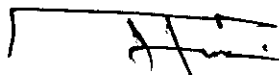
AGAINST GROUNDS

- A- Incorrect, the treatment as well as Appellant conduct noticed from time to time and his constant attitude the actions taken by the Competent Authority are in line with the procedural requirements.
- B- Incorrect and mis-conceiving, when any status quo granted was withdrawn, later-on. Thus the suit pending adjudication in Civil Court was not filed in the proper forum. The Appellant should have actualized the posting orders at all. Even the case thereafter filed in this Honorable Tribunal was too late. Further the Gov/Deptt: has no relevancy with the affairs of APCA activities. The action taken against, is fair and not malafide on the part of Competent Authority under the relevant rules/regulations.
- C- Incorrect regular inquiry was conducted, the appellant was provided all opportunities to defend himself but he failed to do so. The speculation, of Appellant, impugned order is illegal, without lawful authority or having no legal effect is baseless, not warranted to be taken/construed correct one.

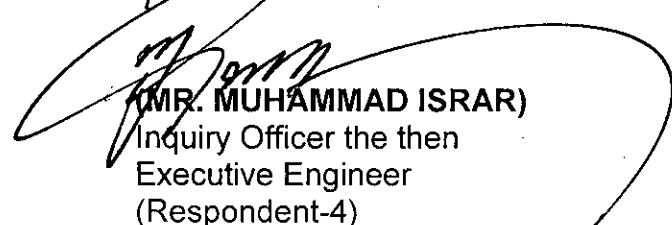
- D- After conducting regular inquiry the appellant has been proved to have committed misconduct hence the impugned order was issued.
- E- Incorrect, Any inordinate delay as assumed in this Para-D of the Service Appeal have no solid grounds to be taken. It is established law that in the disposal of Disciplinary Cases, it usually takes time from the start and its finality. So for the rest of contention/presumption of Appellant are irrelevant and not having worth Consideration.
- F- Incorrect, Appellant has been extended full opportunity of Personal hearing before reaching to its finality, hence the assumption for the rest of Phrases are baseless, irrelevant, having no legal bindings effect.
- G- Incorrect the defendant acted in accordance with Law and Rules.

In the wake of above submissions, the instant Service Appeal, is incompetent and without ~~merit~~ may graciously be dismissed with cost.


SECRETARY TO GOVT: OF
KP C&W Deptt: Peshawar
(Respondent-1)


EXECUTIVE ENGINEER
Building Division Mardan
(Respondent-3)


CHIEF ENGINEER (CENTRE)
C&W Department Peshawar
(Respondent-2)


(MR. MUHAMMAD ISRAR)
Inquiry Officer the then
Executive Engineer
(Respondent-4)

OFFICE OF THE EXECUTIVE ENGINEER C&W DIVISION MARDAN

Dated Mardan

the 28/3/2017.

No. 1734 /BE

To,

The Chief Engineer (Centre),
C&W Deptt: Peshawar.

Subject:- **POSTING /TRANSFER OF JUNIOR CLERK.**

Reference:- Your office order No.220-E/1717/CEC/C&WD Dated 15-3-2017.

With reference to your office Telephonic Message dated 27-3-2017, it is submitted that Mr. Aurang Zeb-V, Junior Clerk, since transferred from this Division is hereby relieved from duty from today the 28th March, 2017.

[Signature]
EXECUTIVE ENGINEER

Copy forwarded to the :-

- 1- Chief Engineer (North) C&W Department Peshawar.
- 2- Superintending Engineer C&W Circle Mardan.
- 3- Sub Divisional Officer Building Sub Division No.IV Mardan.
- 4- Divisional Accounts Officer C&W Division Mardan.

[Signature]
EXECUTIVE ENGINEER

2135
28/3/2017
[Signature]



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 2140 /ST

Dated: 26/10 /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 Chief Engineer (Centre), *CRW Deptt.*
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1153/2019, MR. AURANGZEB KASHMIRI.

I am directed to forward herewith a certified copy of Judgement dated 12.10.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR