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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 14445/2020

Date of Institution ... 08.10.2020

Date of Decision ... 31.01.2022

Ashfaq Ahmad Khan S/o Sandal Khan, Ex-Superintendent (BS-17) Provincial Assembly of Khyber Pakhtunkhwa, Peshawar R/o Budhni, Tehsil & District Peshawar. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary, Provincial Assembly, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Adnan Aman,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant while serving as Superintendent in Provincial Assembly, was charged in FIR U/S 302/324/34 PPC Dated 11-01-2015 alongwith 3 other accused. The appellant duly informed the authority about the incident, which made the appellant suspended from service followed by the impugned order of removal from service dated 01-04-2015. The appellant after facing the trial, was acquitted of the charges vide judgment dated 5-03-2020. The appellant filed departmental appeal dated 11-06-2020, which was not responded, hence the instant appeal with prayers that the impugned orders dated 01-04-2015 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 appellant has been acquitted of the charges contained in FIR by the competent court of law, upon which the appellant was removed from service, hence there remains no ground to maintain the penalty so imposed; that respondents were required to wait for final decision in the criminal case, but they hastily proceeded the appellant and avoided the proper legal procedure; that the inquiry proceedings so conducted have not been done as per method prescribed in law; that the appellant was discriminated, as co-accused(brother of appellant) has been re-instated whereas the same is denied in case of the appellant.

03. Learned Additional Advocate General for the respondents has contended that the appellant was charged in FIR U/S 302/324/34 PPC Dated 11-01-2015 thereafter, he went in hiding; that proper notices were served upon the appellant and the same notices were published in two leading newspapers; that the respondents waited for 15 days, but the appellant did not turn up; that the appellant was proceeded against under Rule-9 of E&D Rules, 2011, hence ex-parte action was taken against the appellant; that the appellant challenged the impugned order dated 01-04-2015 after a period of five years, which is badly time barred.

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

05. In the event of registration of FIR against the appellant, the respondents were required to suspend the appellant from service and to wait for decision in the criminal case, but the respondents, in violation of CSR-194, preferred to proceed him under Rule-9 of E&D Rules, 2011 knowing the fact that an FIR has been registered against him. Such act of the respondents was not based on bonafide and on this score alone; the impugned order is liable to be set aside. The impugned order dated 01-04-2015 would suggest that the appellant was suspended from service dated 23-01-2015 on the basis of registration of FIR

against him. It is also settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. As is evident from their comments, the respondents were well aware that FIR was lodged against the appellant and that his absence was not willful, but the respondents instead of taking lenient view, proceeded the appellant in haste and did not afford appropriate opportunity of defense rather conducted proceedings only to the extent of fulfillment of codal formalities, hence the appellant was condemned unheard. In case of imposing major penalty, principle of natural justice requires that a regular inquiry be conducted in matter and opportunity of defense may be provided to civil servant proceeded against. Moreover, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460

06. We are also mindful of the question of limitation, as the appellant filed departmental appeal after earning acquittal from the charges leveled against him, but the circumstances in the instant appeal are eccentric, which requires dealing in a distinguishable manner, if compared with numerous cases decided by this Tribunal as well as superior court, where government employees remain fugitive from law for years, but in case of the appellant, major penalty was awarded

within less time from the date of institution of criminal case. The august Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

07. We are of the considered opinion that the appellant was illegally kept away from performance of his duty by dealing him under irrelevant law and now in case of his acquittal, no further material is available with respondent to maintain such penalty. In view of the foregoing discussion, the instant appeal is accepted. The impugned order is set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

31.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

ORDER


31.01.2022


Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondent present. Arguments heard and record perused.

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

ANNOUNCED

31.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN

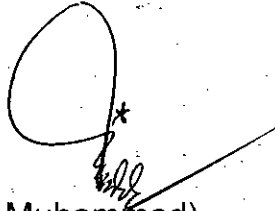

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

12.11.2021

Appellant in person present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Fakhar Alam, Law Officer for respondents present.

Written reply/comments on behalf of the respondents submitted which is placed on file. A copy of the same is handed over to the appellant. Appellant seeks adjournment on the ground that his counsel is out of station. Adjourned. To come up for arguments on 27.01.2022 before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

27.01.2022

Appellant alongwith his counsel present. Mr. Naseer-ud-Din, Assistant Advocate General for respondents present.

Due to paucity of time, arguments could not be heard. To come up for arguments before the D.B on 31.01.2022.

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



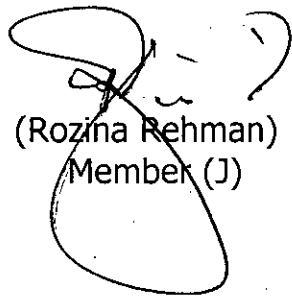
Chairman

24.03.2021

Counsel for the appellant present. Preliminary arguments heard. Record perused.

Appellant Deposited
Security & Process Fee

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal exceptions. The appellant is directed to deposit security and process fee within 10 days. Notice be issued to the respondents. To come up for written reply/comments on 28/06/2021 before S.B.


(Rozina Rehman)
Member (J)

28.06.2021

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Alamzeb S.C for respondents present.

The respondents have not submitted written reply. They are required to submit written reply/comments in office within 10 days positively. If the written reply/comments are not submitted in office within stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 12.11.2021 before D.B.

Stipulated period has passed and reply has not been submitted.


(Rozina Rehman)
Member(J)

P.S

28.07.2021

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







Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 14445 /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/11/2020	<p>The appeal of Mr. Ashfaq Ahmad Khan resubmitted today by Mr. Adnan Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	01.01.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/01/2021</u></p> <p>Nemo for appellant.</p> <p>CHAIRMAN</p> <p></p> <p>Case is adjourned to 24.03.2021 for preliminary hearing, before S.B.</p> <p> (Rozina Rehman) Member (J)</p>

The appeal of Mr. Ashfaq Ahmad Khan ex-superintendent Provisional Assembly KP received today i.e. on 07.10.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the counsel.
- 2- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- ③ Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Wakalat nama in favour of appellant be placed on file.
- 5- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 6- Annexures of the appeal may be attested.
- ⑦ Annexures of the appeal may be flagged.
- 8- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2876 /S.T,

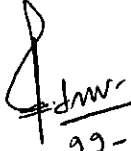
Dt. 09/10 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Mr. Adnan Aman Adv. Pesh.

Respected Sir,

the counsel for the appellant requests for some more time to remove the deficiencies/objections.


22-10-2020

⑮ days time further extended.


22/10/2020

Respected Sir,

the undersigned being the appellants counsel, requests for some more time to remove the deficiencies -

J. Dhruv
09-11-2020

15 days time further extended.

9/11/2020

Respected Sir,

re-submitted after removing all the objections raised by your good office therefore the same be placed & fixed before the S.B for its preliminary hearing - Furthermore no charge sheet & statement of allegations was issued to the appellant.

J. Dhruv
18-11-2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. _____/2020

Ishfaq Ahmad


V/S

The Govt. of Khyber Pakhtunkhwa
& others.

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Appellant


ASHFAQ AHMAD KHAN

Through

ADNAN AMAN

Advocate,

High Court(s), Peshawar.

0321-9853530

Dated: 08-10-2020

①

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

SERVICE APPEAL NO. 14445 /2020

ASHFAQ AHMAD KHAN s/o Sandal Khan, Ex-Superintendent (B-17)
Provincial Assembly of Khyber Pakhtunkhwa, Peshawar
r/o Budhni, Tehsil & Distict Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

.....APPELLANT

Diary No. 11327

Dated 08/10/2020

VERSUS

1. **THE GOVT. OF KHYBER PAKHTUNKHWA**
through Secretary, Provincial Assembly,
Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary Provincial Assembly**
Khyber Pakhtunkhwa, Peshawar
3. **THE ASSISTANT SECRETARY (ADMN)**
Provincial Assembly Khyber Pakhtunkhwa, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER
DATED 01-04-2015 WHEREBY MAJOR PENALTY OF REMOVAL FROM
SERVICE WAS IMPOSED UPON THE APPELLANT AND AGAINST THE
ORDER OF DEPARTMENTAL APPELLATE AUTHORITY DATED NIL WHO
VIDE THE SAME DID NOT PASS ANY APPROPRIATE ORDER OVER THE
DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY
PERIOD OF 90 DAYS.

PRAYER:

By accepting this appeal the impugned removal order dated 01.04.2015 may very kindly be set aside and the appellant be reinstated in service with all back benefits. Any other remedy which this august Tribunal deems fit and appropriate may also be passed in favour of the appellant.

Respectfully Sheweth:

FACTS:

Brief facts which give rise to the instant appeal are as under:-

Filed to-day

Registrar
08/10/2020

Re-submitted to-day
and filed.

Registrar
18/11/2020

1. That the appellant was initially appointed as Assistant in the respondents' institution vide order dated 14.05.2005, after fulfilling all the codal formalities for the said post. Copy of Appointment Order is attached as **ANNEXURE** **A**.
2. That that appellant after appointment submitted his arrival report before the competent authority and started performing his duty quite efficiently, whole heartedly and upto the entire satisfaction of his high ups.
3. That appellant after having a considerable length of service as Assistant, was promoted to the post of Superintendent (BPS-16) now (BPS-17) vide order dated 24-09-2011 and accordingly the appellant took over the charge of his post as Superintendent vide notification dated 10-10-2011. Copy of Promotion Order dated 24.09.2011 & Notification dated 10.10.2011 is attached as **ANNEXURE** **B & C**.
4. That the appellant while performing his duty was booked in a concocted and in this respect an FIR No. 19 dated 11.01.2015 was registered against the appellant and three other accused, under section 302/324/34 PPC in Police Station Chamkani, Peshawar, hence, the appellant informed the competent authority and accordingly the competent authority issued suspension order followed by the impugned removal order dated 01-04-2015 without waiting for the outcome of the final decision on FIR No. 19. Copy of the FIR and impugned order dated 01-04-2015 is attached as **ANNEXURE** **D & D/1**.
5. That the appellant after facing the trial in the criminal case in a competent court of Law whereby trial was started on 18-05-2017 and the trial court after going through the whole available record on file, honourably acquitted the appellant from the charges leveled against the appellant vide judgment dated 05-03-2020. Copy of Judgment dated 05.03.2020 is attached as **ANNEXURE** **E**.
6. That, the appellant after receiving the attested copy of judgment unfortunately virus namely COVID-19 shackled in grip the whole world and lockdown was imposed and accordingly after the lock down which ended in June 2020, the appellant filed Departmental Appeal dated 11-06-2020 which was properly issued dairy No. 823 but the same has not been responded till date. Copy of Departmental Appeal dated 11.06.2020 is attached as **ANNEXURE** **F**.

7. That the appellant having no other efficacious, adequate and alternate remedy but to approach this Honourable Tribunal on the following grounds amongst others:

GRUNDS:-

- A. That the impugned removal order dated 01-04-2015 of the respondents issued to the appellant is against the Law, Rules, Fact & material available on record hence not tenable in the eye of Law and is liable to be set aside.
- B. That the respondents have not acted in accordance with Law and the Rules governing on the subject matter by issuing the impugned removal order dated 01-04-2015 hence not tenable in the eye of Law.
- C. That no charge sheet, no statement of allegation what so ever been served upon the appellant while issuing the impugned removal order dated 01-04-2015.
- D. That no proper inquiry has been conducted by the respondents while issuing the impugned removal order dated 01-04-2015 which is prerequisite as per various judgments of the apex Court for imposing a major penalty.
- E. That, the appellant has been acquitted from the charges leveled against the appellant by the competent court of Law hence, entitled to be reinstated into service with all back benefits.
- F. That, the respondents have acted in a hasty manner while issuing the impugned removal order dated 01-04-2015 without waiting for the outcome of the criminal case registered against the appellant.
- G. That the respondent while passing impugned action of removal from service vide dated 01-04-2015 was initiated and taken to its logical conclusion under a misconception of law and under a wrong law hence it had vitiated entire proceedings including final appellate order dated 01-04-2015, which could not be sustained under the law and is liable to be struck down.

- H. That, the respondent Department are required to keep the appellant under suspension till the final outcome of the criminal case and issuing the impugned removal order dated 01-04-2015 is the result of mismanagement on the part of the respondent which is not sustainable and is liable to be struck down by this Honourable tribunal.
- I. That the act of the respondents by passing the impugned removal order date 01-04-2015 is clear violation of Article- 38 (e) of the Constitution of Islamic republic of Pakistan which states that: **“to reduce disparity in the income and earning of the individual including the persons in Service of Pakistan”.**
- J. That the co-accused namely Aftab Ahmad (brother of the appellant) who was employed as Electrician in Directorate General Health Services, has already been re-instated by his department vide order dated 03.04.2019, but in case in hand, the same has been denied to the appellant and thus he has been treated unequally as guaranteed under Article-4 & 25 of the Constitution, therefore, this Hon'ble Tribunal needs to interfere to meet the ends of justice. Copy of Order dated 03.04.2019 is attached as **ANNEXURE G.**
- K. That any other grounds will be raised at the time of arguments with prior permission of this Honourable Tribunal.

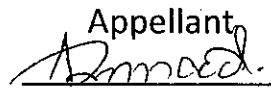
It is, therefore most humbly prayed that on acceptance of the instant service appeal, the impugned removal order dated 01-04-2015 and the order of departmental appellate authority dated Nil, whereby no order was passed over the departmental appeal of the appellant within the statutory period of 90 days, may very kindly be set aside and the appellant be re-instated into service with all back benefits.

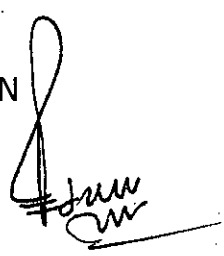
OR

Any other order/ remedy which this august Tribunal deems fit may also be awarded in favour of the appellant.

Dated: 08-10-2020

Through

Appellant

 ASHFAQ AHMAD KHAN

 ADNAN AMAN
 Advocate,
 High Court(s), Peshawar. 

5 + 6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. _____/2020

Ishfaq Ahmad

V/S

The Govt. of Khyber Pakhtunkhwa
& others

AFFIDAVIT

I, Ashfaq Ahmad Khan S/o Sandal Khan R/o Budhni, Tehsil & District Peshawar (Ex-Superintendent (B-17), Provincial Assembly of Khyber Pakhtunkhwa, Peshawar), do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.

KHALID MAHMOOD
Advocate
Oath Commissioner
Peshawar High Court

18-11-20
Amjad
DEPONENT

(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. _____/2020

Ishfaq Ahmad

V/S

The Govt. of Khyber Pakhtunkhwa
& others

ADDRESSES OF THE PARTIES

APPELLANT:

ASHFAQ AHMAD KHAN s/o Sandal Khan, Ex-Superintendent (B-17)
Provincial Assembly of Khyber Pakhtunkhwa, Peshawar
R/o Budhni, Tehsil & District Peshawar.

RESPONDENTS:

1. **THE GOVT. OF KHYBER PAKHTUNKHWA**
through Secretary, Provincial Assembly,
Khyber Pakhtunkhwa, Peshawar.
2. **THE SECRETARY PROVINCIAL ASSEMBLY,**
Khyber Pakhtunkhwa, Peshawar.
3. **THE ASSISTANT SECRETARY**
Provincial Assembly Khyber Pakhtunkhwa, Peshawar.

Appellant

Ashfaq Ahmad Khan

ASHFAQ AHMAD KHAN

Through

ADNAN AMAN

Advocate,

High Court(s), Peshawar.

Dated: 08-10-2020.

8

PROVINCIAL ASSEMBLY OF N.W.F.P.

Annexure

OFFICE ORDER.

Dated Peshawar, the 14/05/2005


"A"

No. PA/NWFP/Admn:/2005/ 12721 Mr. Ishafaq Ahmad Khan S/O Sandal Khan of District Peshawar, is hereby appointed as Assistant in (BPS-11), on purely temporary basis, with immediate effect, with usual allowances as admissible under the rules on the following terms and conditions:-

1. His employment in this Secretariat is purely temporary and his services are liable to be terminated without assigning any reason of 14 days notice or on payment of 14 days salary in lieu of the notice period.
2. In case he wishes to resign he will be required to give 14 days notice or deposit 14 days salary in lieu thereof.
3. He will be governed by such rules & orders relating to leave, travelling allowance, medical attendance, Pay etc as may be issued by the Government for the category of Government Servants to which he will belong.
4. He will be governed by the NWFP, Provincial Assembly Secretariat (Recruitment) Rules, 1974 and such other orders issued from time to time as are made applicable to the staff of this Secretariat.
5. He will also produce his original certificate in connection with qualification besides, domicile, character, antecedents, health and age certificate as required under the rules.
6. He will join duty at his own expense.

BY ORDER OF MR. SPEAKER.

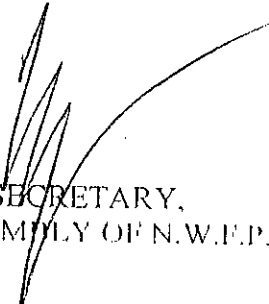
SD/-
SECRETARY,
PROVINCIAL ASSEMBLY OF NWFP

Attested


E.No.PA/NWFP/Admn:/2005/ 12722-25 dated 14/05/2005.

Copy of the above is forwarded for information and necessary action to:-

- 1- The Accountant General, NWFP, Peshawar.
- 2- Mr. Ashtfaq Ahmad Khan S/O Sandal Khan R/O Village Budni Tehsil & District Peshawar.
- 3- Pay Bill Clerk, Provincial Assembly of NWFP.
- 4- Personal file of the official concerned.


ASSISTANT SECRETARY,
PROVINCIAL ASSEMBLY OF N.W.F.P.

(9)

Annexure
" B "

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 24/09/2011.

NO.PA./K.P/Admn:/2011/ 46293 On recommendation of the Departmental Promotion/Recruitment Committee No.II, the Competent Authority is pleased to promote Mr. Ashfaq Ahmad Khan, Assistant BPS-14, against the vacant post of Superintendent BPS-16 (Gazetted) with immediate effect.

SD/-
SECRETARY,
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

E.NO.PA/K.P/Admn:/2011/ 46294-88 Dated 24/09/2011.

Copy of the above is forwarded for information & necessary action to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Manager, Govt Printing Press, Peshawar.
3. Mr. Ashfaq Ahmad Khan, Superintendent, Provincial Assembly of Khyber Pakhtunkhwa.
4. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
5. Personal file of the officer concerned.


ASSISTANT SECRETARY (ADMN),
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Attested



(10)

Annexure
"C"

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 10 / 10 / 2011.

NO.PA/K.P/Admn:/2011/ 48590 In pursuance of this Secretariat Notification No.PA/K.P/Admn:/2011/46293 dated 24-09-2011, Mr. Ashfaq Ahmad Khan, assumed the charge of the post of Superintendent BPS-16, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, on the fore-noon of 24-09-2011.

**SD/-
SECRETARY
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

E.NO.PA/K.P/Admn:/2011/ 48591-95 Dated 10 / 10 / 2011.

Copy of the above is forwarded for information and necessary action to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Manager, Government Printing Press, Peshawar.
3. ✓ The officer concerned.
4. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
5. Personal file of the officer concerned.


**ASSISTANT SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

Attested



Annexure "D"

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست آمداری پولیس رپورٹ شدہ زبردستی 25 جنوری 2011ء اور تعلقہ ضابطہ فوجداری

تاریخ وقت رپورٹ	15/11/11	تاریخ وقت	15/11/11
نام و سکونت اطلاع دہندہ مستغیث	محمد علی خان	تاریخ وقت	15/11/11
مشعر کیفیت جرم (اودھ) حال اگر کچھ یا کیا ہو۔	34/3241/302	تاریخ وقت	15/11/11
جائے وقوعہ حاصلہ زمانہ سے اور سمت		تاریخ وقت	15/11/11
نام و سکونت نام (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100)		تاریخ وقت	15/11/11
کارروائی جو پیش آنے کی اطلاع دہندہ نے اس وقت ہوا اور وہ بیان کردہ		تاریخ وقت	15/11/11
ذاتی سے روانہ تاریخ وقت		تاریخ وقت	15/11/11

ابتدائی اطلاع نمبر 2011ء - وقت صبح 7 بجے اور شہری اور سیاہ چاندنی تھانہ

محمد علی خان صاحب کی طرف سے پیش کردہ رپورٹ کے مطابق کہ محمد علی خان صاحب کی عمر 35 سال ہے۔

محمد علی خان صاحب کی پیدائش 1976ء میں ہوئی ہے۔

محمد علی خان صاحب کی تعلیم ایم بی بی ایس ہے۔

محمد علی خان صاحب نے اپنی پوری زندگی اس نواح میں گزارنے سے پہلے بہت سے کام کیے ہیں۔

محمد علی خان صاحب کی موجودہ پتلا اور مقام پتلا ہے۔

محمد علی خان صاحب نے اپنے پتلا کے بارے میں بتایا ہے کہ اس نے اس وقت اپنی پوری زندگی یہاں گزارنے سے پہلے بہت سے کام کیے ہیں۔

محمد علی خان صاحب نے اپنے پتلا کے بارے میں بتایا ہے کہ اس نے اس وقت اپنی پوری زندگی یہاں گزارنے سے پہلے بہت سے کام کیے ہیں۔

محمد علی خان صاحب نے اپنے پتلا کے بارے میں بتایا ہے کہ اس نے اس وقت اپنی پوری زندگی یہاں گزارنے سے پہلے بہت سے کام کیے ہیں۔

Attested
Fazmi

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 01/03/2015

NO.PA/KP/Admn/2015/ 7632 WHEREAS, you Mr. Ashfaq Ahmad Khan, Superintendent (BPS-17), Provincial Assembly of Khyber Pakhtunkhwa, have been found absent from duty with effect from 12-01-2015.

AND WHEREAS, a copy of FIR vide No.19 Dated 11-01-2015 under Section PPC.302/324/34 received to the office under which you were involved in a murder case and as a result you were suspended from service vide this Secretariat Office Order No.PA/KP/Admn/2015/2152 dated 23-01-2015.

AND WHEREAS, this Secretariat issued A.D register letter vide No.PA/KP/Admn/2015/2916 dated 03-02-2015 at your home address with the direction to resume duty within fifteen (15) days but you failed to do so and remained absent from duty.

AND WHEREAS, a Notice was published in two leading Newspapers with the direction to resume duty within fifteen (15) days but you also failed to join the office within stipulated period.

NOW THEREFORE, in exercise of the powers conferred on him by rule-9 of the Khyber Pakhtunkhwa, Govt Servants (Efficiency & Discipline) Rules 2011, the competent authority has imposed upon you a Major Penalty of Removal from Service with immediate effect on account of continuously absence from the office.

BY ORDER OF THE SPEAKER

SD/-
SECRETARY
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Endt No.PA/KP/Admn/2015/ 7633-36 Dated 01/03/2015.

Copy of the above is forwarded for information to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
3. Mr. Ashfaq Ahmad Khan (Ex-Superintendent) S/O Sandal Khan, R/O Village Budni, near Akbar Poora, Tehsil & District Peshawar.
4. Personal file of Ex-Officer concerned.

~~ASSISTANT SECRETARY (ADMN)~~
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Attested

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Annexure

"D/i"

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Annexure
" "
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**IN THE COURT OF AMER ALI,
ADDITIONAL DISTRICT & SESSIONS JUDGE/
MODEL CRIMINAL TRIAL COURT,
PESHAWAR**

Case No. 163/MC-SC of 2019
Date of Institution 18/05/2017
Date of Transfer to this Court 04/11/2019
Date of Decision 05/03/2020
Statevs..... 1) Ashfaq Ahmad
2) Aftab Ahmad sons of Sandal
3) Muhammad Ali s/o Khalil
4) Liaqat Ali s/o Sher Bahadar
All residents of Budhni, Peshawar
(Accused facing trial)

CASE FIR No. 19 DATED 11.01.2015 U/S
302/324/34 PPC OF POLICE STATION
CHAMKANI, PESHAWAR

JUDGMENT

1. As per narration of FIR, Mukhtiar Ullah Khan SI of PS Chamkani on receipt of information regarding the occurrence reached the casualty of LRH Peshawar where at 1415hours the complainant Mehmood Khan alongside the dead body of his brother Amjid reported that he alongwith Rifaqat Khan and Sadaqat Khan were present at the spot of occurrence when at 1300hours, due to a dispute over water course/drainage a verbal altercation took place between them and the accused namely

Amir Ullah

ATTESTED

Ishfaq Ahmad, Aftab Ahmad sons of Sandal, Muhammad Ali s/o

12 MAR 2020

(Examiner)
Session Court Peshawar

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Khalil and Liaqat s/o Sher Bahadar who were already present duly armed. On the direction of accused Muhammad Ali and Liaqat the accuse Ashfaq and Aftab started firing at them with their respective firearms, resultantly the deceased Amjad sustained firearm injuries and died at the spot. The complainant and his other companion remained unhurt, being unarmed they were unable to retaliate. The deceased was brought to the LRH Peshawar for confirming his death where his death was confirmed.

2. After completion of investigation, initially complete challan u/s 512 Cr.PC was submitted against the accused as they were absconding. Subsequently, the accused facing trial were arrested and their supplementary challan were submitted. The accused were summoned who appeared on bail. After compliance of provisions of section 265-C Cr.PC, formal charge was framed against the accused facing trial, to which they pleaded not guilty and claimed trial. Hence Prosecution witnesses were summoned.

3. Gist of evidence produced by Prosecution is as under;

PW-1 Inam Ullah identified the dead body of the deceased before the police as well as doctor.

PW-2 Amjid Ali is marginal witness to recovery memo Ex.PW2/1 vide which the IO recovered and took into possession blood stained earth from the spot, 27 empties of 7.62bore. He is also marginal witness to recovery

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memo Ex.PW2/2 vide which the IO took into possession blood stained garments of deceased.

PW-3 Ibrahim Khan Inspector submitted complete challan Ex.PW3/1 u/s 512 Cr.PC against the accused

PW-4 Mehmood Khan is the complainant of instant case.

PW-5 Rifaqat is the eyewitness of the occurrence.

Pw-6 Muhammad Anwar SI on receipt of murasila incorporated its contents into FIR Ex.PA.

PW-7 Wali Khan SI is investigation officer of instant case stated that after registration of case FIR, investigation was entrusted to Inayat ur Rehman ASI but as he was relative of both the parties, therefore, on his request the investigation was taken from him and entrusted to him. He proceeded to the spot and prepared the site plan Ex.PB at the instance of complainant. During spot inspection he took into possession blood stained earth from the place of deceased and 27 empties of 7.62bore from the spot vide recovery memo already exhibited as Ex.PW2/1 and sealed the same into parcel No. 1 Ex.P-1 & 2 Ex.P-2 respectively. Similarly, also took into possession blood stained garments of deceased and sealed the same into parcel No. 3 Ex.P-3 vide recovery memo already exhibited as Ex.PW2/2. He vide application Ex.PW7/1 sent the blood stained articles to

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FSL vide application Ex.PW7/2, sent the empties to FSL, reports whereof are Ex.PZ & Ex.PZ/1. He also placed on file list of LRs of deceased Ex.PW7/3. He vide application Ex.PW7/4 applied and obtained warrant of arrest u/s 204 Cr.PC and similarly, vide application Ex.PW7/5 applied and obtained proclamation notice u/s 87 Cr.PC against the accused which were obtained and handed over to DFC concerned for its execution. He also placed on file PM documents of the deceased. Similarly, he also placed on file photocopies of the civil suit. After completion of investigation the case file was handed over to SHO for submission of challan u/s 512 Cr.PC.

After recalling of BBA of accused Muhammad Ali, he formally arrested him and issued his card of arrest Ex.PW7/6. He vide application Ex.PW7/7 produced him before the Court of JMIC and obtained 01 days custody. He interrogated him. On expiry of police custody vide application Ex.PW7/8 for obtaining his further study, which was declined and the accused was sent to judicial lockup. He recorded the statement of accused u/s 161 Cr.PC. he recorded the statement of PWs u/s 161 Cr.PC. After completion of investigation, he handed over the case file to SHO for submission of supplementary challan against the accused Muhammad Ali.

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PW-8 Ghafar Ali Inspector submitted supplementary challan Ex.PW8/1 against the accused Liaqat

PW-9 Ghani Khan DSP submitted supplementary challan Ex.PW8/1 against the accused Ishfaq

PW-10 Humayyun Khan SI submitted supplementary challan Ex.PW8/1 against the accused Muhammad Ali

PW-11 Dr. Muhammad Khalid conducted autopsy on dead body of the deceased Amjad. In this respect the post mortem report is Ex.PM.

PW-12 Naheed Khan SI stated that on 01/10/2016, after BBA was recalled by the court, he formally arrested the accused vide card of arrest exhibited as Ex.PW-12/1. Vide application Ex-PW-12/2, produced the accused before the court of JMIC for physical custody. The same was allowed and two days police custody was granted. After expiry of the police custody, he again produced the accused before the court of JMIC for further custody vide my application Ex-PW-12/3, the same was turned down and the accused was sent to the judicial lockup.

PW13 Nabi Gul constable No. 1545 escorted the dead body of deceased from LRH to KMC for PM examination.

PW-14 Amjad Khan ASI partially investigated the instant case. Accused Ishfaq Ahmad came to the PS and surrendered himself before the police, so Mushtaq Khan

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issued his card of arrest which is Ex.PW14/1. He also placed on file the DD No.27 dated 31.10.2017 showing the arrest of accused, the copy of which is Ex.PW14/2. Accused was handed over to him for investigation, so vide application Ex.PW14/3, produced the accused before the learned JMIC Peshawar for obtaining 10 days police custody which was accepted for two days. The accused led the police party to the spot where he pointed out the spot and in this respect he prepared pointation memo Ex.PW14/4. He recorded statement of accused as well as the PWs u/s 161 Cr.PC. He also made photography of accused during spot pointation, the photographs are Ex.PC (06 in numbers). After expiry period of custody, produced the accused before the learned JMIC Peshawar for recording his confessional statement vide application Ex.PW14/5 where the accused refused to record his statement and he was remanded to the jail. He handed over the case file to the SHO for submission of challan.

Similarly, accused Aftab was also arrested on 29.1.2018 by Hameed Khan ASI who issued his card of arrest which is Ex.PW14/6 which is correct and correctly bears the signature of Hameed Khan ASI. He also placed on file the DD No.5 dated 29.1.2018, the copy of which is Ex.PW14/7. Accused was handed over to him for investigation, so vide application Ex.PW14/8, he

Hameed Khan

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produced the accused before the learned JMIC Peshawar for obtaining 10 days police custody which was accepted for two days. The accused led the police party to the spot where he pointed out the spot and in this respect prepared pointation memo Ex.PW14/9. He recorded statement of accused as well as the PWs u/s 161 Cr.PC. He also made photography of accused during spot pointation, the photographs are Ex.PC/1 (03 in numbers). After expiry period of custody, produced the accused before the learned JMIC Peshawar for recording his confessional statement vide application Ex.PW14/10 where the accused refused to record his statement and he was remanded to the jail. He handed over the case file to the SHO for submission of challan.

PW-15 Mukhtiar Ullah Khan Inspector stated that on obtaining information rushed to the LRH Peshawar where the complainant reported the matter to him which he reduced into Murasila Ex.PA/1 which was read over and explained to the complainant and after admitting the same, he signed the same while endorsed by PW Sadaqat. He also prepared the injury sheet Ex.PW15/1 and inquest report Ex.PW15/2 and sent the dead body of the deceased for mortuary for PM under the escort of constable Nabi Gul and sent the murasila through constable Irfan to the PS for registration of FIR. The scribe of FIR namely

Mukhtiar Ullah

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Session Court Peshawar

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Muhammad Anwar SI who is now dead, being remained in the same PS, he is well conversant to his handwriting and signature.

Prosecution abandoned the remaining PWs and closed its evidence.

4. Statements of accused were recorded wherein they claimed innocence and denied the charges. They did not wish to be examined on oath nor wanted to produce defence.
5. Thereafter arguments of learned Dy.PP for State assisted by learned counsel for complainant and learned counsel for the accused have been heard and record perused.
6. Learned Dy.PP for the State assisted by learned counsel for complainant have argued that the accused facing trial have been charged in a promptly lodged FIR as the time of occurrence was 1300hours while the report was lodged within one hour and 15 minutes which considering the distance between the spot and the LRH should be considered as promptly lodged thus excluding the possibility of false implication after deliberation and consultation. It is a day light occurrence the parties were well known to each other, hence, there is no question of misidentification. Motive behind the occurrence is proved from the record as civil suit regarding the motive i.e. water course was already pending.

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Session Court Peshawar

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accused Liaqat and Muhammad Ali are charged for raising the Lalkara while accused Ashfaq and Aftab are charged for effective firing. Recovery of crime empties and blood from the spot proves the spot of occurrence. The FSL report in respect of the crime empties shows that they were fired from different weapons, thus further corroborating the prosecution case. the complainant as well as the eyewitness have given confidence inspiring testimony regarding the mode and manner in which the occurrence took place as well as the spot. PW Rifaqat is an independent witness as he is relative of both the parties. The prosecution through overwhelming evidence has proved its case against the accused beyond shadow of doubt and all the accused are liable for the murder of deceased which was committed in furtherance of their common intention.

7. On the other hand learned counsel for the accused has argued that it is case of exaggerated charge as besides two accused charged for Lalkara while two accused were charged for effective firing inspite of the fact that the deceased sustained a single firearm injury. The recovery of crime empties from the spot is also doubtful the marginal witness thereto during cross examination stated that the parcels were not sealed in his presence and no monogram was affixed. The report regarding the occurrence was lodged at 1415hours whereas according to the OPD chit available

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12 MAR 2020

(Examiner)
Session Court Peshawar

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on file the dead body of the deceased was available in LRH at 1341hours, the delay of said 30 minutes has not been explained. No identifiers of the dead body are mentioned in the inquest report which shows that the same was brought to the LRH by those other than the complainant and the alleged eyewitnesses and the same was unattended. The presence of the complainant was procured later on. Though there is a permanent police post situated at LRH no report was made in the said permanent police post which raises further doubts over the mode and manner of lodging of report. The prosecution has thus failed to bring home the guilt of the accused.

8. **Criminal law was set in motion on the basis of report** lodged by the complainant which was reduced in the form of murasila Ex.PA. The time of report mentioned in the murasila is 1415hours whereas according to the OPD chit Ex.PW11/x-1 annexed with the inquest report and PM report of the deceased the same was issued at 1341hours as per which the deceased was received dead meaning that the dead body of the deceased was available in the LRH Hospital at least 30minutes prior to the lodging of the report. It is also an admitted fact that like all major hospitals there is a permanent PP having its Incharge and police contingent which fact has also been admitted by PW-15 who scribed the report as well as the IO of the case PW-7. However, no report was made in the said PP of LRH which coupled with the

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2 MAR 2020

(Examiner)
Sd/- Sr. Const. Peshawar

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delay of half hour between the time when the dead body was available in the LRH and the lodging of report point towards the report having been lodged after deliberation and consultation. Moreover, there is also a very real possibility arising out of said facts that the complainant and eyewitness were not accompanying the dead body at all and in fact were not even present at the spot of occurrence for had the scenario been otherwise the report would have been lodged immediately after the arrival of the dead body and would have been lodged in the PP LRH.

9. Two accused are charged for effective firing at the deceased, however, as per the post mortem report Ex.PM the deceased sustained only a single firearm entry wound over the right mid eyebrow. Though allegedly from the spot of occurrence 27 empties of 7.62bore were recovered from the spot which as per the FSL report Ex.PZ/1 were fired from different weapons yet the recovery of said empties is highly doubtful as marginal witness to recovery memo in respect thereof examined as PW-2 during cross examination stated that the parcels were not sewed and sealed in his presence and no monogram was affixed on the same in his presence. Furthermore, the said empties were taken into possession by the IO allegedly on 11/01/2015 while as per the FSL report Ex.PZ/1 they were received in FSL on 26/01/2015 i.e. after delay of 15 days which is inspite of the fact that the FSL is

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(Examiner)

Union Court Peshawar

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on the spot. Witness volunteered that after sustaining injuries, the deceased become unconscious and when he were shifting him to hospital, he died on the way but I cannot say where he died."

Thus the complainant has negated his own version regarding the death of the deceased at the spot as mentioned in the FIR/murasila.

12. In the FIR/murasila the weapon of offence used by the accused is not mentioned. The complainant examined as PW-4 and eyewitness examined as PW-5 during their statements have also not specified the type of firearms with which the accused were armed which too point towards their not being present at the spot.

13. The case of other two accused attributed the role of proverbial Lalkara is at even weaker footing as they did not have any direct dispute nor motive with the complainant party for the commission of the offence and there is nothing on record to show that the accused charged with effective firing were under their influence or had reason to act on their command.

14. It is established principle of administration of criminal justice even a single meaningful doubt is enough for acquittal of the accused, in the instant case the case against the accused facing trial is doubtful from various aspects. The prosecution has been

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12 MAR 2020

(Examiner)
Session Court Peshawar

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unable to establish the guilt of the accused beyond reasonable doubts, the benefit of which must be extended to the accused.

15. Hence, the accused facing trial are hereby acquitted, they are on bail, their bail bonds are cancelled and sureties are relieved from liability of bonds.

16. The case property be kept intact till the expiry of period of appeal.

17. File be consigned to record room after necessary completion and compilation.

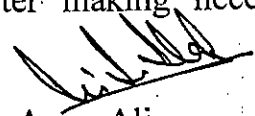
Announced
05/03/2020



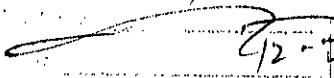
Amer Ali
Addl: Sessions Judge/
Model Criminal Trial Court,
Peshawar

CERTIFICATE

Certified that this judgment consists of (14) pages, each and every page has been signed by me after making necessary correction therein.



Amer Ali
Addl: Sessions Judge/
Model Criminal Trial Court,
Peshawar

No:	
Dated of Application	
Name of Applicant	
Ward	6800 217
Fee	
Signature of Applicant	
Dated of Presentation	12-3-2020
Date of Delivery	12-3-2020

CERTIFIED TO BE TRUE COPY

12 MAR 2020

(Executive)
Criminal Agency Session Court
Peshawar

TO

The Secretary,
Provincial Assembly of Khyber Pakhtunkhwa,
Peshawar.

Annexure
"F"

27

Subject: APPEAL FOR REINSTATMENT INTO SERVICE.

Respected Sir,

With profound veneration, it is stated:

1. That, I was appointed as Assistant on 14-05-2005, latter on promoted to the post of Superintendent on 2409-2011 and performed my duties with devotion up to entire satisfaction of my high ups.
2. That, I was charged in a murder case through an alleged FIR No. 19, dated 11-01-2015.
3. That, I was not present at my village on the time of accident on 11-01-2015, therefore, I was totally innocent in the above FIR. Hence, in trepidation fabricated allegations planed, I left my residence and abscond from there in order to save my life and honor of my family.
4. That, through a letter bearing NO. PA/KP/Admn:/2015/2916, dated 03-02-2015, I was considered absent from my duty, which is not received.
5. That, the Competent Authority was also informed about FIR registered against me in a murder case on 12-01-2015.
6. That, in response of FIR, the Competent Authority issued my suspension order from service vide office order NO.PA/KP/Admn:/2015/2152, dated 23-01-2015.
7. Para3(a),(b)&(c) of ESTACODE clearly guided the rules for suspension of Government servants accused on criminal offences, which are reproduced below as:
 - a. A Government servant committed to prison either for debt or on criminal charge should be considered as under suspension from the date of his arrest and until the termination of the proceedings against him i.e. his suspension is automatic from the date of arrest till termination of proceedings against him;
 - b. A Government servant against whom a criminal charge or proceeding for arrest for debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e.g. whilst released or bail) if the charge made or proceedings taken against him is connected with his position as a Government servant or likely to embarrass him in discharge of his duties as such or involves moral turpitude; and
 - c. The requirement of obtaining approval of authority for extension of suspension period after every 3 months laid down in Government Servants (Efficiency and Discipline), Rules, 1973 applies to suspension ordered under these rules. Article 194 or 194- A does not mention any such requirement.
8. Similarly, Para I, ii, ESTACODE clearly guided Detention of Government servants under the Public Safety Act reveals that:-

As soon as it comes to notice that an employee has been detained in prison, action should be taken to place him under suspension, the period of the employee's detention [should be treated as period spent under] committal to prison within the meaning of article 194 C.S.R and the pay and allowances during suspension should be regulated under F.R.53;

If the employ is subsequently acquitted honorably he should be reinstated forthwith. He will be entitled to receive full salary for the entire period of his absence from duty under F.R.54(a).

9. The Competent Authority took ex — parte disciplinary proceedings and imposed major penalty of removal from service instead of considering suspension as per rules vide Notification NO. PA/KP/Admn/2015/7633- 36, dated 01-04-2015, whereas, on the other hand trial case proceedings were pending to decide in the honorable Court.
10. The Honorable, Model Criminal Trial Court, Peshawar, acknowledged me as innocent and grant me acquittal on the charge of murder on 05-03-2020 (Copy of Court decision enclosed for ready reference). In the light of above crystal clear explained facts and figures, it is humbly prayed that on acceptance of this appeal, the Notification bearing NO. PA/KP/Admn/2015/7633-36, dated 01-04-2015 may please be set- aside and my services may be reinstated on my previous position, so that I could be able to work under you kind control.

I shall be very thankful for your this act of kindness.

Yours faithfully,

Ashfaq Ahmad Khan
Ashfaq Ahmad Khan
Superintendent
Provincial Assembly
Of Khyber Pakhtoonkhwa, Peshawar.

823
DIARY OF KHYBER PAKHTUNKHWA
PROVINCIAL ASSEMBLY

11-6-2020

Attested
[Signature]

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR

E-Mail Address: nwfidghs@yahoo.com office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230



OFFICE ORDER

In light of court verdict the suspension order in respect of Mr. Aftab Ahmad Electrician (Civil Servant) Issued by the then MS LRH Peshawar vide his Office Order bearing Endst: No. 3079-84/E-III /LRH dated 26.01.2015 is hereby withdrawn.

Subsequently, services of Mr. Aftab Ahmad Electrician are placed at the disposal of MS BBS Teaching Hospital Abbottabad against the vacant post of Electrician/ Generator Operator in the interest of public service with immediate effect.

Nb: Arrival/ departure reports should be submitted to this Directorate for record.

No. 3255-58/Personnel

Copy forwarded to the:-

1. Hospital Director MTI/ LRH Peshawar.
2. MS BBS Teaching Hospital Abbottabad.
3. DAO Abbottabad.
4. Official Concerned.

For information and necessary action.

Sd/xxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.
Dated 03/04/2019

DIRECTOR (HRM)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P PESHAWAR.

Handwritten initials and date: 4-4-2019

Attested

DN. 5786

Annexure

" 6 "

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WAKALATNAMA

(Power Of Attorney)

29

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Asifq Ahmad

(Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

VERSUS

The Govt. of KP & others

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

I/ We, The undersigned appeallant in the above noted Service appeal, do hereby appoint **Mr. Muhammad Ijaz Khan Sabi, Fazal-e-Wahid, Nasir Naeem Umar Khaili & Adnan Aman**, Advocates to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my /our counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/Counsel at my/our matter.

Attested & Accepted By.

Asifq Ahmad
Signature of Executants.

Muhammad Ijaz Khan Sabi (bc-10-7578)

Fazal-e-Wahid

Nasir Naeem Umar Khaili

Adnan Aman (bc-13-4253)

Advocates High Court, Peshawar
B-15, Haroon Mansion, Khyber Bazar,
Peshawar Office: 091-2551553

Asifq Ahmad Khan
s/o Sandal Khan
R/o Budhni
P.O Budhni
Mohallah Khazai
Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

SERVICE APPEAL No-14445/20

Ashfaq Ahmad Khan S/O Sandal Khan , Ex-Superintendent Provincial Assembly Secretariat
Khyber Pakhtunkhwa PeshawarAppellant

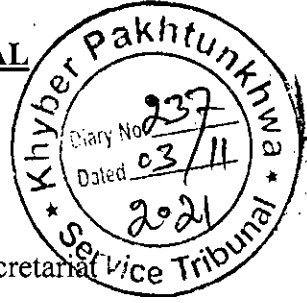
VERSUS

The Government of Khyber Pakhtunkhwa Through Secretary Provincial Assembly Khyber
Pakhtunkhwa Peshawar and others.....Respondents

INDEX

S.No	Discretion of Documents	Annexures	Pages
1.	Copy of Comments	-	1-3
2.	Affidavit	-	4
3.	Copy of application & FIR	Annexure-A & B	5-6
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5.	Copy of letter dated 03/02/2015 directing the appellant to resume duty within (15) Days.	Annexure-D	8
6.	Newspapers Notices	Annexure-E & F	9-10
7.	Notification dated 01/04/2015 regarding removal from Service.	Annexure-G	11
8.	Copy of letter dated 28/09/2020 to the Law Department regarding opinion.	Annexure-H	12
9.	Copy of letter dated 20/10/2020 wherein the case was remanded back to the Provincial Assembly Secretariat.	Annexure-I	13
10.	Copy of letter dated 02/12/2020 wherein the case of appellant was referred to the Establishment Department.	Annexure-J	14
11.	Copy of opinion dated 16/12/2020 of the Establishment Department.	Annexure-K	15
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BEFORE THE KHYBER PAKHTUNKWA SERVICES TRIBUNAL
PESHAWAR



Service Appeal No.14445/2020.

Ashfaq Ahmad Khan S/O Sandal Khan, Ex-Superintendent Provincial Assembly Secretariat
Khyber Pakhtunkhwa PeshawarAppellant

VERSUS

The Government of Khyber Pakhtunkhwa Through Secretary Provincial Assembly Khyber
Pakhtunkhwa Peshawar and others.....Respondents

COMMENTS ON BEHALF OF RESPONDENTS.

PRELIMINARY OBJECTIONS:-

- A. That the Appellant has got no cause of action and locus standi to file the present Appeal.
- B. That the Appellant has come to this Hon'ble Tribunal with unclean hands by suppressing the actual and material facts.
- C. The removal order of appellant dated 01/04/2015 was made by the respondents in light of Rule-9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011.
- D. The present appeal is time barred and barred by law.

REPLY TO THE FACTS:

- 1-3 Para's No-1-3 are correct, hence no comments.
4. In response to P/4 it is submitted that the appellant never informed the Secretariat about the incident happened on 11/01/2015. In fact, it was brother of the deceased who submitted an application along with FIR to the Secretary Provincial Assembly that the appellant has killed his brother and requested to take appropriate actions against him. *(Copy of Application along with FIR is enclosed as Annexure A & B)*. In light of the said application, the appellant was suspended from Service vide letter dated 23/01/2015 w.e.f,12/01/2015. *(Copy of letter dated 23/01/2015 is enclosed as Annexure-C)*. Moreover, vide letter dated 03/02/2015 issued by the Secretariat, the Appellant was informed that he remained absent from duty w.e.f, 12/01/2015 without any information and directed him to resume duty within fifteen days otherwise further action will be taken against him under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.

(Copy of letter dated 03/02/2015 is enclosed as Annexure-D). Apart from that, Notices in two leading newspaper, daily "Mashriq" and "Aaj" were also published with the direction to the Appellant to resume duty within fifteen days but the he failed to join the office within the stipulated period. *(Copies of Notices of newspapers are enclosed as Annexure E & F).* Thereafter, the appellant was removed from service vide order dated 01/04/2015. *(Copy enclosed as Annexure-G).*

5. Pertains to record, hence no comments.
6. In response to P/6, it is submitted that, appeal of the appellant was processed for consideration and further order of the competent authority who was pleased to order that, opinion of the Law Department in the matter may be sought. Consequently the Secretariat sought opinion from them vide letter dated 28/09/2020. *(Copy enclosed as Annexure- H.)* The Law Department vide letter dated 20/10/2020 remanded the case back to the Provincial Assembly Secretariat to consult the case in hand with the Establishment Department being Service matter *(Copy enclosed as Annexure-I).* So the case was referred to the Establishment Department on 02/12/2020. *(Copy enclosed as Annexure-J).* The Establishment Department gave their opinion that the appellant was removed from service after proper proceedings under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The Rules ibid provide for preferring of an appeal against the orders of the competent authority within 30-days only. Therefore, the appellant impugning the notification dated 01/04/2015, after a period of Five years is barred by time. *(Copy of opinion dated 16/12/2020 of the Establishment Department is enclosed as Annexure-K).*
7. The Appellant has no locus standi and cause of action to file a badly time barred appeal.

REPLY TO THE GROUNDS:

- A-B. The removal order of the appellant dated 01/04/2015 was made by the respondents in light of Rule-9 of Government of the Khyber Pakhtunkhwa Establishment and Administration Department Notification 2011. After completing all the legal formalities the Secretariat took such steps against the Appellant. Detail reply is given in Para-4 ibid.
- C-D. Rule-9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 provides the detail procedure regarding such cases which was adopted by the Secretariat before removal of the Appellant. In light of the said Rule there was no need of charge sheet or inquiry etc. *(Copy of (E&D) Rules 2011 is enclosed as Annexure-L).*


E. Pertains to record, hence no comments.

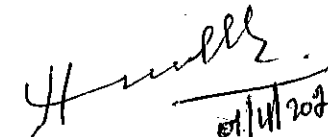
F. The respondents never acted in a hasty manner and strictly acted according to the procedure mentioned in Rule -9. Detail reply has been given in Para-4 above.

G to J. Already explained in Para-4 and 6 ibid.

K. Respondents be allowed to raise additional grounds during the arguments.

In light of the above mentioned facts, it is most humbly prayed, that the Appeal having no weight may kindly be dismissed.

Respondent - 
Assistant Secretary (Admin.)
Provincial Assembly of
Khyber Pakhtunkhwa.
09/09/2021


RESPONDENTS
182
09/09/2021
Nasrullah Khan Khattak
Secretary,
Khyber Pakhtunkhwa Assembly

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No.14445/2020.

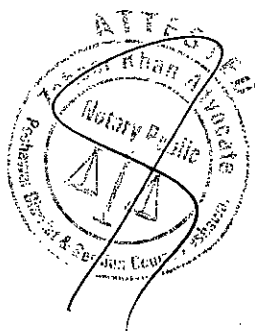
Ashfaq Ahmad Khan S/O Sandal Khan, Ex-Superintendent Provincial Assembly Secretariat
Khyber Pakhtunkhwa PeshawarAppellant

VERSUS

The Government of Khyber Pakhtunkhwa Through Secretary Provincial Assembly Khyber
Pakhtunkhwa Peshawar and others.....Respondents

AFFIDAVIT

I Fakhr-e-Alam Law Officer Provincial Assembly of Khyber Pakhtunkhwa do hereby
states on oath that the contents of the reply in the above titled Service Appeal is
true and correct according to record and that nothing has been concealed from this
Hon'ble Service Tribunal.



DEPONENT

CNIC: 17301-6078318-5
Cell No-0311-9002929

کہ جناب عالی

گزارش ہے کہ سید سعید علی احمد علی خان کو استغاثہ احمد

ولد عبدالخالق سکنہ بدھنی تحصیل و ضلع لہور نے

مورخہ 15-11-11 کو قتل کیا ہے جسکی اپنی بی بی اور تمام بھائی

میں درستی ہے۔

لینڈیا آب صاحبان کی خدمت میں التماس ہے کہ مذکورہ

لغوی استغاثہ احمدی کے خلاف مناسب کارروائی کرنے کے

احکامات صادر فرمائیں گزارش ہوگی۔

نوٹ:- ایف آئی آر فوٹو کاپی کف ہے

دعا گو رفیق خان ولد رحمت خان

سعیدی۔ امی علی خان فقیر

سکنہ بدھنی تحصیل و ضلع لہور

تعمان چشتی -

15-11-2015

Attested
FAKHR-E-ALAM
Law Officer
Provincial Asst. Secy
Khyber Pakhtunkhwa

for up on personal
file

Address A.
for up on personal

15/11/2015

15/11/2015

DSCAS

~~_____~~
~~_____~~
~~_____~~
~~_____~~

97

تصدیق شد کہ جیل میں مقید رہا۔ مقررہ عہدہ ممانڈہ اور کچھوئی میں سارا رکھ کر زبردستی ختم کیا گیا۔
 15/18
 ردہ خانہ KMC، بھویا جانا ہے۔ یہ سہ ماہیہ فونن ایڈیشن سے فوراً جیم میں
 مانی کارڈ کے بعد فائبر جیم بدست کپڑوں کے ساتھ 136 نمبر بھویا جانا ہے۔ افران میں
 صاحبان کو اطلاع دی جائے۔ یہ فیبر جیم کو فتح میں مہیاں معلوم کرنے کی خاطر مقرر
 کتب خانہ کے ساتھ۔ یہ فیبر جیم کے ساتھ ہی عزتوں کے ساتھ جان و جمع ہیں۔ یہ سہ ماہیہ
 فیبر جیم کے ساتھ ہی کپڑوں کے ساتھ ہی 11 کا دو نمبر تھا اور یہ فیبر جیم کے ساتھ ہی
 کپڑوں کے ساتھ ہی کپڑوں کے ساتھ ہی افران میں صاحبان کو بھویا جانا ہے۔ اطلاع دی جائے
 جیم میں جاتے ہوئے فیبر جیم کے ساتھ ہی 49 نمبر کے ساتھ ہی کپڑوں کے ساتھ ہی

فیبر جیم کے ساتھ ہی
 11-1-2015

Copy
 Legal Branch
 Capital City Police Peshawar
 13-01-15

Attested
 2

FAKHR-E-ALAM
 Law Officer
 Provincial Assembly
 Khyber Pakhtunkhwa

اطلاع کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا۔ اور اس فرم پر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حرف الف یا ب سرخ روشنائی سے ہال مقابل نام پر
 ایک لازم یا مشتمل علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہوں لکھنا چاہئے۔

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**OFFICE ORDER**Dated Peshawar, the 23/01/2015.

No. PA/K.P/Admn:/2015/ 2152 Mr. Ashfaq Ahmad Khan, Superintendent, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, is hereby suspended from service w.e.f. 12-01-2015 under Article-194-A of the Civil Servants Regulation.

During the period of his suspension, he shall receive subsistence allowance as admissible under the Rules.

Further action under the Khyber Pakhtunkhwa, Government Servants, (Efficiency & Discipline) Rules, 2011 will follow.

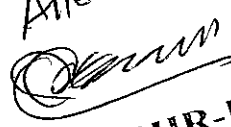
SD/-
SECRETARY
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Encl. No. PA/KP/Admn:/2015/ 2153-57 Dated 23/01/2015.

Copy of the above is forwarded for information and necessary action to: -

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Additional Secretary (PAC), Provincial Assembly of Khyber Pakhtunkhwa.
3. Mr. Ashfaq Ahmad Khan (Superintendent) S/O Sandal Khan, R/O Village Budni, near Akbar Poora Tehsil & District Peshawar.
4. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
5. Personal file of the officer concerned.


ASSISTANT SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Alkafed

FAKHR-E-ALAMI
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

Annexure D

8



**PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA**

NO.PA/K.P/Admn/2015/ 2916
Dated Peshawar, the 03/02/2015.

102

To

Mr. Ashfaq Ahmad Khan (Superintendent),
S/O Sandal Khan,
Village Budni, near Akbar Poora,
Tehsil & District Peshawar.

Subject: **NOTICE/ASSUMPTION OF DUTY**

As per report you ^{that} have been involved in a murder case registered against you vide FIR No.19 dated 11-01-2015 under Section PPC 302/324/34 and consequently you were suspended from service vide this Secretariat Office Order No.PA/KP/Admn/2015/2152 dated 23-01-2015. However, you remain absent from duty w.e.f. 12-01-2015 without any information of the competent authority.

You are, therefore, directed through this Notice to resume duty within fifteen (15) days positively, otherwise further action will be taken against you under Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011.

Akhtool
(Signature)
FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

(Signature)
(Ibrahim Khan)
Assistant Secretary (Admn)
Provincial Assembly of Khyber Pakhtunkhwa



Annexure - E

پشاور ایسٹ آباد اسلام آباد اور کراچی سے ایک وقت شائع ہونے والا کثیر الاشاعت قومی روزنامہ

روشنی کی نمائندگی، آج کا نصب العین

روزنامہ

پشاور
پاکستان

ایڈیٹر
عبدالواحد یوسفی

صفحات 12

جلد 26 جہزہ 26 فروری 2015ء 6 جنوری الاول 1436ھ 12 پی پی پی ای 1 نمبر 48 شماره

نوٹس فیور ہاضری

ہر گاہ کہ اشفاق احمد خان ولد مندول خان سرٹیفکٹ سہ ماہی اسمبلی خیبر پختونخوا، سکشن خاڑی ڈسٹرکٹ تحصیل و ضلع پشاور آپ کو مطلع کیا جاتا ہے کہ آپ مورخہ 12/01/2015 سے لیکر ایک دفتر سے غیر حاضر ہیں اور مجاز اتھارٹی نے آپ کو بحالہ چھٹی نمبر PA/KP/Admn/2015/2916 مورخہ 03/02/2015 بذریعہ ڈاک رجسٹری گھر کے پتہ پر بھیجا گیا کہ آپ پندرہ دن کے اندر اپنی ڈیوٹی پر حاضر ہو جائیں ورنہ اسے اس چھٹی کے بارے میں کوئی تاہم لکھنا نہیں۔

آپ کو زبردستی اس بارے میں کوئی تاہم لکھنا نہیں۔ اس کی اشاعت سے چند روز پہلے ہی اسے اپنی ڈیوٹی پر حاضر ہو گیا تھا جس کی صورت میں آپ کے خلاف کوئی کارروائی عمل میں لائی جائے گی جس کے تحت وہاں آپ کو ملازمت سے برخواستگی کر سکتا ہے۔

ابراہیم خان: اسسٹنٹ سیکریٹری ایڈمنسٹریشن خیبر پختونخوا اسمبلی

INF(P)1096 www.khyberpakhtunkhwa.gov.pk

26/2/05 to

آخری تاریخ 12/3/05

Attested
(Signature)
FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

3.3.2015 شہری تہذیب



(10)

Annexure - F

صوبائی اسمبلی خیبر پختونخوا پشاور
نوٹس غیر حاضری

مقامی اسمبلی کے اجلاس کے دوران ہونے والے غیرو حاضری کے بارے میں نوٹس جاری کیا گیا ہے۔ اس نوٹس کے تحت تمام اراکین کو اپنی غیرو حاضری کی اطلاع دی جا رہی ہے۔

اس نوٹس کے تحت تمام اراکین کو اپنی غیرو حاضری کی اطلاع دی جا رہی ہے۔ اس نوٹس کے تحت تمام اراکین کو اپنی غیرو حاضری کی اطلاع دی جا رہی ہے۔

ابراہیم خان
 اسسٹنٹ سیکرٹری ایڈمن خیبر پختونخوا اسمبلی

Daily Maswuz
Dated 03-03-2015 to 18.3.2015

(15) days become between the
above mentioned dates.

Attested

 FAKHR-E-ALAM
 Law Officer
 Provincial Assembly
 Khyber Pakhtunkhwa

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**NOTIFICATION**

Dated Peshawar, the 01/01/2015

NO.PA/KP/Admn/2015/ 7634 WHEREAS, you Mr. Ashfaq Ahmad Khan, Superintendent (BPS-17), Provincial Assembly of Khyber Pakhtunkhwa, have been found absent from duty with effect from 12-01-2015.

AND WHEREAS, a copy of FIR vide No.19 Dated 11-01-2015 under Section PPC.302/324/34 received to the office under which you were involved in a murder case, and as a result you were suspended from service vide this Secretariat Office Order No.PA/KP/Admn/2015/2152 dated 23-01-2015.

AND WHEREAS, this Secretariat issued A.D register letter vide No.PA/KP/Admn/2015/2916 dated 03-02-2015 at your home address with the direction to resume duty within fifteen (15) days but you failed to do so and remained absent from duty.

AND WHEREAS, a Notice was published in two leading Newspapers with the direction to resume duty within fifteen (15) days but you also failed to join the office within stipulated period.

NOW THEREFORE, in exercise of the powers conferred on him by rule-9 of the Khyber Pakhtunkhwa, Govt Servants (Efficiency & Discipline) Rules 2011, the competent authority has imposed upon you a Major Penalty of Removal from Service with immediate effect on account of continuously absence from the office.

BY ORDER OF THE SPEAKER

SD/-

SECRETARY

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWAEndt No.PA/KP/Admn/2015/ 7633-36 Dated 01/01/2015.

Copy of the above is forwarded for information to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
3. Mr. Ashfaq Ahmad Khan (Ex-Superintendent) S/O Sandal Khan, R/O Village Budni, near Akbar Poora, Tehsil & District Peshawar.
4. Personal file of Ex-Officer concerned.

Attested

J. Khan
Mr.

Meera
Meera
EAKHR-E-ALAM
ASSISTANT SECRETARY (ADMN) Provincial Assembly
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA
Khyber Pakhtunkhwa

Annexure - H



**PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA**

NO.PA/KP/Admn:/2020/ 8340
Dated Peshawar, the 28/09/2020.

To

The Secretary to Government of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs & Human Rights Department.

Subject: **OPINION WITH REGARD TO APPEAL FOR REINSTATEMENT
INTO SERVICE**

Dear Sir,

I am directed to refer to the subject cited above and to say that Mr. Ashfaq Ahmad, Ex-Superintendent (BPS-17) of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa was suspended from service vide office order No.PA/KP/Admn:/2015/2152 dated 23-01-2015 under Article 194-A of Civil Service Regulations on account of his involvement in a murder case registered against him vide FIR No.19 dated 11-01-2015 (copy enclosed). Later on due to his wilful absence from duty he was issued a Notice regarding resumption of duty, in the two leading newspapers i.e. Daily Aaj and Daily Mashriq on 26-03-2015 & 03-03-2015 but he did not resume his duties. Resultantly, his services were terminated vide this Secretariat Notification No.PA/KP/Admn:/2015/7632 dated 01-04-2015 under the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 (copy enclosed).

After trial, the ex-officer concerned has been acquitted by the Court of Law on 05-03-2020 in the murder case registered against him vide FIR referred to above (copy of the judgment enclosed).

After acquittal, the ex-officer concerned has submitted an appeal with a request that Notification No.PA/KP/Admn:/2015/7633 dated 01-04-2015 terminating his service, may be set-aside and he may be reinstated on his previous position.

In view of the above, I am, therefore, directed to request you to please examine the case in hand and let this Secretariat know whether the appellant can be reinstated in service on his previous position or otherwise.

Yours faithfully,

Alkated
Amir
AKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

Shahid Rehman
(SHAHID REHMAN)
ASSISTANT SECRETARY (ADMN)
Provincial Assembly of Khyber Pakhtunkhwa

Annexure - 1

12



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/5-1/2012-VOL-VII) 0388-
DATED: PESH: 28 OCTOBER, 2020

To

The Assistant Secretary (Admn),
Provincial Assembly, Khyber Pakhtunkhwa.

Subject: OPINION WITH REGARD TO APPEAL FOR REINSTATEMENT
INTO SERVICE

Dear Sir,

I am directed to refer to your Department's letter No. PA/KP:/Admn:/2020/8340 dated 28.09.2020 on the subject noted above and to state that the incumbent officer was suspended after his involvement in criminal case under C.S.R. 194. Then after suspension, the officer was removed from service by the Competent Authority by imposing major penalty vide notification No. PA/KP/Admn/2015/2152 dated 23.01.2015 on grounds of his willful absence under rule-9 of the Khyber Pakhtunkhwa Civil Servants (Efficiency and Discipline) Rules, 2011.

2. Being a service matter, Establishment Department may be consulted under rule-9 of the Government Rules of Business, 1985.

Yours Faithfully,

N/G
20.10.2020

Section Officer (Opinion-I)

Endst: of even No. & date.

Copy is forwarded to the:

1. PS to Secretary Law, Department.
2. PA to Additional Secretary (Opinion).

Section Officer (Opinion-I)

Attested
Signature

FAKHEE-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

DS/A

21/10/2020
AS/PA

21/10

Supervisor

Annexure J

14



PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

No.PA/KP:/Admn:/2020/13675
Dated Peshawar, the 02/12/2020.

To

Mr. Muhammad Qasim,
Section Officer (R-IV),
Govt of Khyber Pakhtunkhwa,
Establishment Department.

Subject: **OPINION WITH REGARD TO APPEAL FOR REINSTATEMENT INTO SERVICE**

Memo:

Reference your letter No. SOR-IV(E&AD)/3-1/2020 dated 19-11-2020 on the subject cited above.

It is clarified that the ex-officer (Mr. Ashfaq Ahmad, Superintendent) was involved in a murder case registered against him on 11-01-2015 and consequently he was suspended from service on 23-01-2015 under Article 194 of Civil Service Regulations. Later on the Secretariat while considering his long absence from duty, initiated proceedings against him and as a result penalty of removal from service was imposed upon the ex-officer on 01-04-2015, while he was absconder.

The ex-officer was arrested by the local police on 31-10-2017 and he was released on bail on 11-12-2017. Now, the ex-officer has been acquitted by the Court of Additional Session Judge/Model Criminal Court Peshawar vide its decision dated 05-03-2020.

Attested
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FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

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ASSISTANT SECRETARY (ADMN)
Provincial Assembly of Khyber Pakhtunkhwa

Annexure - K

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Government of Khyber Pakhtunkhwa
ESTABLISHMENT DEPARTMENT
(Regulation Wing)

No.SOR.IV(ED)/10-1/2020/
Dated, Peshawar, the 16.12.2020

To

The Assistant Secretary (Admn),
Provincial Assembly Secretariat,
Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: OPINION WITH REGARD TO APPEAL FOR REINSTATEMENT INTO SERVICE

I am directed to refer to your letter No.PA/KP/Admn/2020/13675 dated 02.12.2020 on the subject noted above and to state that the appellant was removed from service after proper proceedings under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011. The Rules ibid provide for preferring of an appeal against the orders of the competent authority within thirty days only. Therefore, the appeal impugning the notification dated 01.04.2015, after a period of five years, is barred by time.

(MUHAMMAD QASIM)
SECTION OFFICER (R-IV)

Ali Akbar
Qasim
FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 16th September, 2011.

No.SO(REG-VI)E&AD/2-6/2010.-In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. Short title, application and commencement.---(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

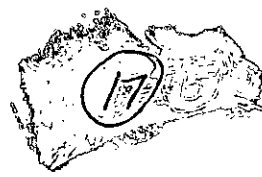
(3) These shall come into force at once.

2. Definitions.---(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

Ali Akbar
16/9/11

FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa



(e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;

(f) "competent authority" means-

- (i) the respective appointing authority;
- (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules:

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

(g) "corruption" means-

- (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
- (ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
- (iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
- (iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf, which cannot be accounted for and which are disproportionate to his known sources of income; or
- (v) maintaining a standard of living beyond known sources of income; or
- (vi) having a reputation of being corrupt;

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(Signature)
FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;
- (k) "inquiry officer" means an officer appointed by the competent authority under these rules;
- (l) "*misconduct*" includes-
 - (i) conduct prejudicial to good order or service discipline; or
 - (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
 - (iii) conduct unbecoming of Government servant and a gentleman; or
 - (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
 - (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
 - (vi) making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
 - (vii) conviction for a moral offence by a court of law.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

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FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa



3. **Grounds for proceedings.**---A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or
- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. **Penalties.**---(1) The following are the minor and the major penalties, namely:

- (a) Minor penalties:
 - (i) censure;
 - (ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:
 - (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;
- (b) Major penalties:
 - (i) reduction to a lower post or pay scale or to a lower stage in a time scale.

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FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa



- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.---(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

- (a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

Provided that no opportunity of showing cause or personal hearing shall be given where-

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
- (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
- (iii) a Government servant is involved in subversive activities; or
- (iv) it is not reasonably practicable to give such an opportunity to the accused; or

- (b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

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Law Officer
Provincial Assembly
Hyber Pakhtunkhwa



- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

(2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

6. **Suspension.**---A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.

7. **Procedure where inquiry is dispensed with.**---If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;
- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;

on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether

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Khyber Pakhtunkhwa

the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, except where the Chief Minister himself is the competent authority, shall decide the case within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period;

- (d) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charges have been proved against him;
- (e) exonerate the accused, by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose any one or more penalties mentioned in rule 4, by an order in writing, if the charge or charges are proved against the accused:

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any.

8. Action in case of conviction or plea bargain under any law.---Where a Government servant is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority, after examining facts of the case, shall-

- (a) dismiss the Government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily:

Provided that dismissal in these cases shall be with immediate effect from the date of conviction by a court of law;

Attested
(Signature)
FAKHR-E-ALAM
 Law Officer
 Provincial Assembly
 Khyber Pakhtunkhwa



- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

9. Procedure in case of wilful absence.---Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. Procedure to be followed by competent authority where inquiry is necessary.---(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary inquiry.

Attested.
Faris E-Alam
Faris E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa



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11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be, shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.---(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be, shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No.V of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

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Law Officer
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- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. Duties of the departmental representative.---The departmental representative shall perform the following duties, namely:

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

14. Order to be passed on receipt of report from the inquiry officer or inquiry committee.---(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

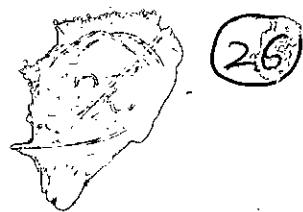
(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

- (a) Inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;

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Provincial Assembly
Aber Pakhtunkhwa



- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;
- (c) Provide a copy of the inquiry report to the accused; and
- (d) Direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused during personal hearing, by an order in writing-

- (i) Exonerate the accused if charges had not been proved; or
- (ii) Impose any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee.

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. Personal hearing.---The competent authority may, by an order in writing, call the accused and the departmental representative, alongwith relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

Ali Aed.
[Signature]
FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 14445/020

Date of Institution ... 08.10.2020

Date of Decision ... 31.01.2022

Ashfaq Ahmad Khan S/o Sandal Khan, Ex-Superintendent (BS-17) Provincial Assembly of Khyber Pakhtunkhwa, Peshawar R/o Budhni, Tehsil & District Peshawar. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary, Provincial Assembly, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Adnan Aman,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant while serving as Superintendent in Provincial Assembly, was charged in FIR U/S 302/324/34 PPC Dated 11-01-2015 alongwith 3 other accused. The appellant duly informed the authority about the incident, which made the appellant suspended from service followed by the impugned order of removal from service dated 01-04-2015. The appellant after facing the trial, was acquitted of the charges vide judgment dated 5-03-2020. The appellant filed departmental appeal dated 11-06-2020, which was not responded, hence the instant appeal with prayers that the impugned orders dated 01-04-2015 may be set aside and the appellant may be re-instated in service with all back benefits.



16. Procedure of inquiry against Government servant lent to other governments or organizations etc.---(1) Where the services of Government servant to whom these rules apply are transferred or lent to any other government department, corporation, corporate body, autonomous body, authority, statutory body or any other organization or institution, hereinafter referred to as the borrowing organization, the competent authority for the post against which such Government servant is posted in the borrowing organization may-

- (a) Suspend him under rule 6; and
- (b) Initiate proceedings against him/her under these rules:

Provided that the borrowing organization shall forthwith inform the authority which has lent his services, (hereinafter referred to as the lending organization) of the circumstances leading to the order of his suspension or the initiation of the proceedings, as the case may be:

Provided further that the borrowing organization shall obtain prior approval of the competent authority in the lending organization before taking any action under these rules against a Government servant holding a post in basic pay scale 17 or above.

(2) If, in the light of findings of the proceedings taken against the accused in terms of sub rule (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rule 14.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), the Chief Minister may, in respect of certain Government servant or class of Government servants to whom these rules apply, authorize any officer or authority in the borrowing organization to exercise all the powers of the competent authority under these rules.

17. Departmental appeal and review.---(1) An accused who has been awarded any penalty under these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned

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Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing-

- (a) Uphold the order of penalty and reject the appeal or review petition; or
- (b) Set aside the orders and exonerate the accused; or
- (c) Modify the orders or reduce the penalty.

(3) An appeal or review petition preferred under these rules shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language.

18. Appearance of counsel.---No party to any proceedings under these rules at any stage of the proceedings, except proceedings under rule 19, shall be represented by an advocate.

19. Appeal before Khyber Pakhtunkhwa Province Service Tribunal.---(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Province Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. I of 1974).

(2) If a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within a period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of thirty days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.

20. Exception.---Notwithstanding anything to the contrary contained in these rules, in cases where Government servants collectively strike work, wilfully absent themselves from duty or abandon their official work, the competent authority in respect of the senior most accused may serve upon them, through newspapers or any other mean, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Government servants any of the major penalties prescribed in these rules.

21. Indemnity.---No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued there-under.

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FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa



22. **Jurisdiction barred.**---Save as provided under these rules, no order made or proceedings taken under these rules shall be called in question in any court and no injunction shall be granted by any court in respect of any decision so made or proceedings taken in pursuance of any power conferred by, or under these rules.

23. **Repeal.**---(1) The Khyber Pakhtunkhwa government servants (Efficiency & Discipline) Rules, 1973 are hereby repealed.

(2) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any Government servant under repealed rules shall continue under these rules.

(3) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any employee under the said repealed rules or under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rules made thereunder, or any other law and rules shall continue under that law and rules, in the manner provided thereunder.

SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT.

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FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa



GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 18th July, 2012.

No.SO(REG-VI)E&AD/2-6/2010.-In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules,2011, the following amendments shall be made, namely:

AMENDMENTS

1. In rule 4, in sub rule (1), in clause (b), for sub-clause (i), the following shall be substituted, namely:

“(i) reduction to a lower post of pay scale or to a lower stage in a time scale for a maximum period of five years:

Provided that on restoration to original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher posts during subsistence of the period of penalty;”.

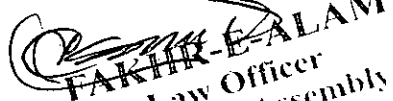
2. In rule 8, in clause (a), in the proviso, the word “immediate Committee”, occurring second time, the words “subject to sub-rule (7) of rule 11” shall be added.

3. In rule 14, in sub-rule (6), after the words “Inquiry Committee”, occurring second time, the words “subject to sub-rule (7) of rule 11” shall be added.

4. In rule 19, in sub-rule (2), for the word “thirty”, the word “ninety” shall be substituted.

5. Rule 22 shall be deleted.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

Ahmed

FAKIR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 921 /ST

Dated: 25-4-2022

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 Secretary Provincial Assembly,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1445/2020, MR. ASHFAQ AHMAD KHAN

I am directed to forward herewith a certified copy of Judgement dated 31.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD

Service Appeal No.437/2018

Date of Institution ... 02.04.2018
Date of Decision ... 17.02.2021



Muhammad Younas son of Muhammad Miskeen, Ex-Chowkidar, BHU
Serhan, resident of Village & P.O Sarha Tehsil & District Abbottabad.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health
Department Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

Sardar Muhammad Azeem,
Advocate ... For appellant.

Noor Zaman Khan Khattak,
District Attorney ... For respondents.

ROZINA REHMAN ... MEMBER (J)
ATIQ-UR-REHMAN WAZIR ... MEMBER (E)

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

ROZINA REHMAN, MEMBER : This appeal has been filed against the order dated 04.08.2014 whereby the penalty of removal from service was imposed upon the appellant. It is the legality and validity of this order which has been challenged by him in the present service appeal filed U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

Ashfaq
vs
Provincial
Govt

From
appellant

2. Brief facts of the case are that appellant was appointed in Health Department as Chowkidar on 22.12.1997. Due to involvement in a criminal case, on 11.08.2013, he was arrested and sent to judicial lockup. The respondents' Department without waiting for the result of the criminal case, issued the impugned order dated 04.08.2014 whereby the appellant was removed from service. He was acquitted by the competent Court of Law on 16.12.2017, where-after, he filed departmental appeal on 04.01.2018 but the same was dismissed, hence the present service appeal.

3. The learned counsel for appellant argued that the order dated 04.08.2014 is against law, facts and norms of natural justice and that the appellant was not treated in accordance with law and rules. He argued that the absence of appellant from duty was due to his arrest in a criminal case which was not intentional and the situation was beyond the power of appellant. He contended that Seventeen years of service of appellant was not taken into consideration and the order was passed in a harsh manner and that too, without issuance of show cause notice and personal hearing of the appellant. He submitted that no proper inquiry was conducted and acquittal of the appellant by competent Court of Law was not taken into consideration. Reliance was placed on 1995 SCMR 950; 2013 SCMR 903; 2012 SCMR 165; 1998 PLC (C.S) 1430; 2012 SCMR 165; 2003 PLC (C.S) 514 and 2001 SCMR 269.

ATTESTED
 EX. ATTORNEY
 Kishor Chakradhara
 Service Tribunal
 Peshawar

4. Conversely, learned District Attorney argued that appellant remained absconder for a considerable time, never contacted the competent authority or any other official of the Department. He argued that after registration of FIR No.268, appellant remained absconder till his arrest on 21.11.2014. He argued that all the codal formalities were complied with in

shape of issuance of absence notice, publication in the newspaper but he shows no response, therefore, major penalty of removal from service was imposed upon him after finding him guilty of willful absence from duty. He, therefore, requested for dismissal of the instant service appeal.

5. The appellant initially appointed as Chowkidar in 1997 had rendered 17 years of service, when an F.I.R was lodged against him U/S 302/324 PPC on 11.08.2013 and as a result thereof he was arrested. The respondents declared him absconder and kept him under suspension w.e.f 11.08.2013. Simultaneously disciplinary proceedings were also initiated against him under Rule-9 of E&D Rules, 2011 on the charges of his willful absence due to his nomination in a criminal case and consequently, he was awarded major penalty of removal from service on 04.08.2014. The appellant remained in Jail until 16.12.2017, when he was acquitted from the charges and was released. The appellant preferred departmental appeal on 04.01.2018, which was rejected on 02.02.2018, thereafter instituted the instant service appeal on 02.04.2018. On the question of limitation it was noted that departmental appeal of the appellant was not rejected on the point of limitation but on merits. Authority would be deemed to have condoned the delay. Reliance is placed on 1995 SCMR 950. It was also observed that since the appellant was behind the bar, hence was unable to respond to the show-cause notice, hence was removed from service but after his acquittal, he preferred departmental appeal, which was rejected. No regular inquiry was conducted against appellant and he was not afforded opportunity to defend his case, as he was in judicial lockup.


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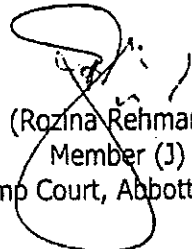
BY
Name
Signature
Date

6. Strictly legally speaking, the imposition of major penalty of removal from service on the basis of a flawed inquiry report particularly, after the appellant's acquittal in the criminal case by the Court of Competent Jurisdiction, appears to be a punishment dis-proportionate to the alleged charge of misconduct attributed to the appellant. In the circumstances, the appellant has made out a case for Indulgence of the Tribunal. Reliance is placed on 2007 PLC (CS) 1327; 2001 SCMR 269 and 2003 PLC (CS) 514.

7. In view of the above, the impugned order dated 04.08.2014 is set aside and appellant stands reinstated into service. The intervening period between 05.08.2014 till date is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED.
17.02.2021


(Attiq ur Rehman Wazir)
Member (E)
Camp Court, Abbottabad


(Rozina Rehman)
Member (J)
Camp Court, Abbottabad

Certified to be true copy


Khyber Pakhtunkhwa
Camp Court, Abbottabad

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