

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 3728/2020

Date of Institution ... 21.04.2020

Date of Decision ... 07.09.2021

Ijaz Khan son of Mumtaz Khan, Process Server Senior Civil Judge, Bannu,
R/O Bangi Khel, Sorani, P.O. Nizam Bazar, Tehsil & District Bannu.
... (Appellant)

VERSUS

District & Sessions Judge, Bannu and one another.
... (Respondents)

Present:

MR. INAYAT ULLAH KHAN, --- For Appellant.
Advocate

MUHAMMAD ADEEL BUTT, --- For respondents.
Additional Advocate General

AHMAD SULTAN TAREEN --- CHAIRMAN
ROZINA REHMAN --- MEMBER(Judicial)

JUDGEMENT


AHMAD SULTAN TAREEN, CHAIRMAN:-The Appellant,
through service appeal described above in the heading, has invoked the
jurisdiction of this Tribunal for relief put forth in the prayer as copied below:

“On acceptance of this service appeal, the original impugned orders dated
21.01.2020, 17.02.2020 and final order dated 17.03.2020 may kindly be set
aside and the appellant may kindly be awarded back benefits for the
intervening period w.e.f 22.07.2017 to 17.10.2019. Any other relief to whom
the appellant is found entitled may also be granted.”

2. Having no need for detailed discussion of the factual account as given in
the memorandum of appeal, suffice to point out that the appellant was
dismissed from service with imposition of major penalty which impelled
him firstly to seek the relief through departmental appeal and then through
Service Appeal No1232/2017 before this Tribunal, having failed to get any

remedy from the departmental appellate forum. The said appeal was decided vide judgment dated 17.10.2019. According to operative part of the said judgment, the appeal was accepted. Consequently, impugned order dated 22.07.2017 was set aside and the appellant was reinstated into service with direction to the respondents to conduct de-novo inquiry strictly in accordance with law and rules within a period of 90 days after receipt of the judgment. The issue of back benefits was made subject to the outcome of de-novo inquiry. According to the order dated 21.01.2020 as annexed with the memorandum of appeal, competent authority as a result of de-novo inquiry in pursuance to judgment of this Tribunal, held him guilty of misconduct and liable to punishment under the rules. Resultantly, the said authority i.e. Senior Civil Judge, Bannu imposed upon the appellant penalty of censure as provided under the Rule-4 (1) (A) (i) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The Appellant filed departmental appeal to the next higher authority i.e. the District & Sessions Judge, Bannu against the said order. The learned appellate authority dismissed the departmental appeal of the appellant on 17.03.2020. Obviously, being not happy, the appellant invoked the jurisdiction of this Tribunal on the basis of facts and grounds mentioned in his memorandum of appeal.

3. Learned counsel for appellant argued that the impugned orders are against law, facts and material available on record, hence, not tenable in the eyes of law being in violation of Article 4, Article 10-A, Article 13-A, and Article 25-A of the Constitution of Islamic Republic of Pakistan, 1973. He submitted that the appellant was exonerated from any liability or his involvement in the matter of civil dispute by the PWs whose statements were recorded during the course of regular inquiry. The observation to the



effect that the charge stood established against the appellant being misconceived, without substance and force. Learned counsel submitted that the findings of the Inquiry Officer, Competent Authority and Appellate Authority are the result of misreading or non-reading of the statements of witnesses, hence, not tenable in the eyes of law and the impugned orders are liable to be set at naught alone on this ground. Further submitted that two punishments could not be awarded in intertwined shape for one charge. Lastly, he submitted that the impugned orders are also violative of Section 24-A of General Clauses Act as the competent authority failed to pass a speaking order with sound reasons. Therefore, he requested for setting aside the impugned orders by awarding the back benefits w.e.f 22.07.2017 to 17.10.2019.

4. Conversely, learned A.A.G contended that the order of the authority is legal and lawful. He submitted that the involvement of appellant floats on the surface of record and the appellant, being an employee of District Judiciary, should have refrained himself from any act, which may give smell of bad practices by involvement in such act which goes to tarnish the image and impartiality of District Judiciary as a whole as well. Further submitted that there is no ill-will against the appellant. He got involved in practices which made him liable for disciplinary action under the law. Lastly, he while defending the impugn orders, stated that on one hand, the appellant admits that he was penalized with penalty of censure but on the other hand, he is claiming back benefits which makes his conduct doubtful and penalty may be minor or major but the main thing is conviction which the appellant admitted, therefore, requested for dismissal of the instant service appeal.

5. We have heard the arguments and perused the record.




6. The case of the appellant in the simplest terms in light of the factual account summed up hereinabove is that he is aggrieved both from the penalty of censure as well as from refusal of respondent No.2 i.e. the Senior Civil Judge, Bannu to grant him the back benefits. The order dated 17.02.2020, about refusal of the said benefits is available on record as annexed with the appeal. It is there in the said order that Mr. Ijaz Khan Process Server was dismissed from his services vide order dated 22.07.2017, for which he filed an appeal before the Khyber Pakhtunkhwa Service Tribunal for reinstatement. On acceptance of Appeal No.1232/2017 on 17.10.2019, he was reinstated into service. The issue of back benefits was subjected to outcome of de-novo inquiry. It is further observed vide order dated 17.02.2020 that after conclusion of the de-novo inquiry, minor penalty of censure was imposed upon accused official as he was found guilty of part allegations vide order dated 21.01.2020. It was concluded that the accused official admittedly had not performed his duties during the period under dismissal, therefore, he was not held entitled to any back benefits at the time of final order of imposing penalty of censure.


7. It is a matter of fact that the appellant was dismissed from service and he was reinstated into service subsequently on the basis of judicial pronouncement in Service Appeal No.1232/2017 decided on 17.10.2019 with liberty to the respondents for conducting of de-novo inquiry. Certainly, the reinstatement of the appellant after setting aside of his dismissal order had become final when the appellant in consequence of the de-novo inquiry was imposed with a minor penalty of censure. It seems that the competent authority was oblivious of the option given in the judgment dated 17.10.2019 of this Tribunal about the issue of back benefits and may be for this reason, the order as to disposal of the de-novo inquiry as impugned in



this appeal is silent about granting or not granting of the back benefits in aftermath of the penalty of censure. The reasons given in order dated 17.02.2020 about rejection of the appellant's application for back benefits are not workable under the facts and law. It is not disputable that the appellant was reinstated after setting aside of his dismissal order. What the law as contained in Section-17 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 says that where a civil servant has, under an order which is later set aside, being dismissed or removed from service or reduced in rank, he shall, on setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine. Having a legal entitlement for back benefits of the arrear of pay for the intervening period between the date of dismissal of appellant from service and the date of his reinstatement into service, the refusal of such benefits for the given period is unjust. Therefore, the appellant is hereby held entitled for the back benefits as indicated hereinbefore and the impugned order dated 17.02.2020 about refusal of said benefits is set aside. However, the penalty of censure is maintained and the appeal to this extent shall be deemed as dismissed. The appeal stands disposed of in the given terms with direction to the respondent No.2 to grant arrears of the pay as back benefits to the appellant. There is no order as to costs. File be consigned to the record room.

ANNOUNCED
07.09.2021


(ROZINA REHMAN)
MEMBER(J)


(AHMAD SULTAN TAREEN)
CHAIRMAN

Order
07.09.2021

Appellant present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our judgment of today of this Tribunal placed on file, the appellant is hereby held entitled for the back benefits as indicated hereinbefore and the impugned order dated 17.02.2020 about refusal of said benefits is set aside. However, the penalty of censure is maintained and the appeal to this extent shall be deemed as dismissed. The appeal stands disposed of in the given terms with direction to the respondent No.2 to grant arrears of the pay as back benefits to the appellant. There is no order as to costs. File be consigned to the record room.

Announced.
07.09.2021


(Rozina Rehman)
Member (J)


(Ahmad Sultan Tareen)
Chairman

12.01.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Shafqat Ullah Khan, Superintendent, on behalf of respondents No. 1 & 2, are also present.

Written reply on behalf of respondents not submitted. Representative of the department is seeking further time for submission of written reply/comments. Adjourned to 17.02.2021 on which date file to come up for written reply/comments before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

17.02.2021

Junior to senior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Shafqatullah, Superintendent, for the respondents are also present.

Representative of the department submitted written reply/comments on behalf of respondents No. 1 & 2 which is placed on record. Adjourned to 06.05.2021 on which date file to come up for rejoinder and arguments before D.B.

(Muhammad Jamal Khan)
Member

06.05.2021


Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 07.09.2021 for the same as before.

Reader

20.10.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General is also present.


Neither written reply on behalf of respondents submitted nor any representative on behalf of the respondent-department is present, therefore, notices be issued to them for submission of written reply/comments. File to come up for written reply/comments on 23.11.2020 before S.B.


(Muhammad Jamal Khan)
Member (Judicial)

23.11.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Written reply on behalf of respondents not submitted. Learned Additional Advocate General requests for further time to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 12.01.2021 on which date file to come up for written reply/comments before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

19.05.2020 Nemo for the appellant. Adjourned. To come up for preliminary hearing on 03.06.2020 before S.B. Notice be issued to the appellant and his counsel.


(M. Amin Khan Kundi)
Member (J)

03.06.2020 Nemo for the appellant.

Notices as required on 19.05.2020 seem to have not been issued. Fresh notices be issued to appellant/counsel for the next date of hearing. To come up for preliminary hearing on 12.08.2020 before S.B.


Chairman

12.08.2020 Counsel for the appellant present.

Contends that initially there were three charges against the appellant, out of which two were withdrawn through the show cause notice. The remaining allegation was regarding role of appellant in jirga between two rival litigating parties and receiving cash amount as well as jewelry weighing nine Tolas. The last mentioned charge was not included in the original complaint nor the enquiry officer found the appellant guilty of the same. Despite, the competent authority imposed impugned penalty of Censure through order dated 21.01.2020. The competent authority, while disentitling the appellant from back benefits, kept under consideration only the fact that the appellant did not perform duty for the period he remained under dismissal. Apart from that no valid reason ever prevailed with the competent authority.

Subject to all just exceptions and in view of available record alongwith arguments of learned counsel, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 20.10.2020 before S.B.


Chairman


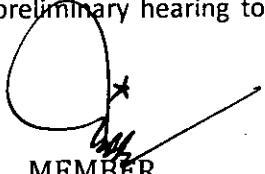
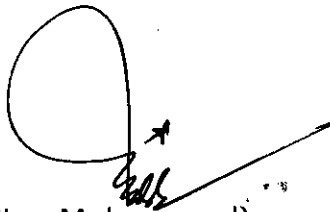

Amir Khan Durrani
Security & Process Fee

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 3728 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/04/2020	<p>The appeal of Ijaz Khan resubmitted today i.e 27.04.2020 by Mr. Inayatullah Khan, Advocate, may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 27/4/2020</p>
2-	11.05.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up on <u>11.05.2020</u></p> <p style="text-align: right;"> MEMBER</p> <p>Nemo for the appellant. Adjourned To come up for preliminary hearing on 19.05.2020 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member</p>

The appeal of Mr. Ijaz Khan son of Mumtaz Khan received today i.e. on 21.04.2020 by Mr. Inayat Ullah Khan, Advocate is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

1- Annexure-A of the appeal is illegible which may be replaced by legible/better one.

No. 1026 /S.T,

Dt. 21-04 /2020



REGISTRAR —
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Inayat Ullah Khan Advocate, Peshawar.

Sir,
Resubmitted
clerk Samiullah Khan
A.D. of Inayat Ullah Khan
Ijaz
27-4-2020

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

3728

S.A.No. ____/2020

Ijaz Khan..... Appellant

Versus

District and Sessions Judge, Bannu & others..... Respondents

I N D E X

S.No.	Description of documents.	Annexure	Pages.
1.	Grounds of appeal.		1-10
2.	Affidavit.		11
3.	Addresses of the parties.		12
4.	Copy of appointment order.	A	13-15
5.	Copy of service appeal No.1232/2013 along with judgment dated 17.10.2019	B-C	20-29
6.	Copy of notice dated 09.11.2019	D	30
7.	Copy of reply dated 22.11.2019	E	31-34
8.	Copy of charge sheet	F	35
9.	Copy of reply dated 06.12.2019	G	36-39
10.	Copy of application dated 09.12.2019 to withdraw complaint No.11706.	H	40
11.	Statements of PW-1 to 4	I-I/3	41-46
12.	Copy of Arbitration Award	I/4	47-48
13.	Copy of inquiry report dated 17.12.2019.	J	49-51
14.	Copy of final show cause notice dated 13.01.2020	K	52-53
15.	Copy of reply dated 14.01.2020	L	54
16.	Copy of impugned order dated 21.01.2020	M	55
17.	Copy of departmental appeal dated 06.02.2020 along with impugned final order dated 17.03.2020	N-O	56-68
18.	Copy of application dated 23.01.2020 filed by the appellant for award of back benefit	P	69
19.	Copy of letter dated 25.01.2020 addressed by respondent No.2 to the District Accounts Officer, Bannu seeking guidance	Q	70

S.No.	Description of documents.	Annexure	Pages.
20.	Copy of reply dated 03.02.2020 furnished by District Accounts Officer	R	71
21.	Copy of impugned order dated 17.02.2020	S	72-73
22.	Copy of departmental appeal dated 26.02.2020	T	74-78
23.	Wakalatnama.		79

Appellant

through



Inayat Ullah Khan
Advocate High Court
LL.M (U.K)
Cell: 0333-9227736

Dated: 03.04.2020

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.Khyber Pakhtunkhwa
Service TribunalDiary No. 2521Date 21-4-2020

3728

Service Appeal No. _____/2020

Ijaz Khan son of Mumtaz Khan

Process Server

Senior Civil Judge, Bannu

R/O Bangi Khel, Sorani, P.O. Nizam Bazar,

Tehsil and District Bannu..... Appellant

Versus

- 1) District and Sessions Judge, Bannu.
- 2) Senior Civil Judge, Bannu..... Respondents

Appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned original order 21.01.2020 whereby the penalty of "**CENSURE**" was imposed upon the appellant in denovo inquiry proceedings against which Departmental Appeal dated 06.02.2020 was preferred before the appellate authority which was declined vide order dated 17.03.2020 and the same was communicated to the appellant on 30.03.2020, hence the instant appeal is presented before this Hon'ble Tribunal within 30 days stipulated period, which is well within time.

Filed to-day

Registrar

21/4/2020

Re-submitted to-day
and filed.

Registrar

27/4/2020

It is pertinent to mention that the appellant also preferred an application dated 23.01.2020 for grant of back

benefits for the intervening period w.e.f 22.07.2017 to 17.10.2019 but the same was declined vide order dated 17.02.2020 against which departmental appeal dated 26.02.2020 was preferred before the appellate authority but the same was also declined vide single order dated 17.03.2020, which is mentioned in the heading of this Appeal.

Prayer:

On acceptance of this service appeal, the impugned original orders dated 21.01.2020, 17.02.2020 and final order dated 17.03.2020 may kindly be set aside and the appellant may kindly be awarded back benefits for the intervening period w.e.f 22.07.2017 to 17.10.2019.

Any other relief to whom the appellant is found entitled may also be granted.

Respectfully Sheweth;

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

- 1) That the appellant was appointed as Process Server in BPS-3 on 04.11.2003 by order of Senior Civil Judge, Bannu.

(Copy of appointment order is attached as Annex: "A").

- 2) That the appellant has more than 16 years service at his credit so far.
- 3) That the appellant earlier filed service appeal No.1232/2013, against his dismissal order dated

22.07.2017, which was allowed by the Hon'ble Service Tribunal vide judgment dated 17.10.2019 by reinstating him in service with the directions to respondents to conduct denovo inquiry strictly in accordance with law and rules within a period of 90 days after the receipt of this judgment.

It was further observed by the Hon'ble Tribunal that the issue of back benefits shall be subject to the outcome of the denovo inquiry.

(Copy of service appeal No.1232/2013 along with judgment dated 17.10.2019 are attached as Annex: "B and C" respectively).

- 4) That respondent No.2 i.e. Senior Civil Judge, Bannu issued notice No.1034/SCJ dated 09.11.2019 to the appellant seeking his reply regarding complaint No.11706 within 03 days.

(Copy of notice dated 09.11.2019 is attached as Annex: "D").

- 5) That the appellant filed a detailed reply dated 22.11.2019 to the Senior Civil Judge wherein it was contended that the alleged complaint No.11706 is the outcome of malafide, ill-will and the appellant was unnecessarily falsely implicated without having any role in the matter being innocent.

(Copy of reply dated 22.11.2019 is attached as Annex: "E").

- 6) That respondent No.2 appointed Kaleem Ullah, Civil Judge-VI, Bannu as Inquiry Officer who served the appellant with vide charge sheet dated Nil for allegations contained therein.

(Copy of charge sheet is attached as Annex: "F").

- 7) That the appellant filed his detailed reply by refuting/ denying all the baseless allegations contained in the charge sheet with sound reasoning with a request to withdraw the proceedings in the best interest of justice by exonerating him from the baseless allegations.

(Copy of reply dated 06.12.2019 is attached as Annex: "6").

- 8) That the Inquiry Officer recorded statements of PW-1, PW-2, PW-3 and PW-4 regarding complaint No.11706 whereby opportunity of cross examination was afforded to the appellant.

It is pertinent to mention that PW-1 namely **Guldar Ali Khan** and PW-2 namely **Sher Ayaz Khan** also filed an application dated 09.12.2019 regarding complaint No.11706 with a prayer that since Ijaz Khan son of Mumtaz Khan was not involved in the matter of arbitration or acted as Arbitrator/ Agent. The civil dispute was arbitrated by Mufti Hidayatullah Shah and Mufti Rizwan who also pronounced the arbitration award which is also available in written form upon which the parties were agreed.

It is also mentioned in the application that we also requested to withdraw the complaint No.11706 in the Court of Additional Sessions Judge-III, Bannu.

(Copy of application dated 09.12.2019 to withdraw complaint No.11706 is attached as Annex: "14" while statements of PW-1 to 4 are attached as Annex: "1 to 1/3" and copy of Arbitration Award is attached as Annex: "1/4").

- 9) That an inquiry report dated 17.12.2019 was completed by the Inquiry Officer wherein minor penalty was suggested to be imposed upon the appellant and thereafter the

inquiry report was forwarded to respondent No.2 i.e. Senior Civil Judge, Bannu.

(Copy of inquiry report dated 17.12.2019 is attached as Annex: "J").

- 10) That after receipt of the inquiry report by respondent No.2, the appellant was served with a final show cause notice No.109/SCJ dated 13.01.2020.

(Copy of final show cause notice dated 13.01.2020 is attached as Annex: "K")

- 11) That the appellant filed his reply dated 14.01.2020 to the respondent No.2 wherein it was categorically stated that from the statements of PWs, it becomes abundantly clear that the appellant neither involved in the arbitration proceedings of a civil dispute nor remained as Jirga member, therefore, he may kindly be exonerated from the allegations as contained in the charge sheet, show cause notice and inquiry report.

(Copy of reply dated 14.01.2020 is attached as Annex: "L").

- 12) That respondent No.2 being the competent authority vide order dated 21.01.2020 imposed the minor penalty of "**CENSURE**" upon the appellant in terms of Rule-4(I)(a)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

(Copy of impugned order dated 21.01.2020 is attached as Annex: "M").

- 13) That the appellant feeling aggrieved preferred his departmental appeal dated 06.02.2020 against the impugned original order dated 21.01.2020 before the

appellate authority i.e respondent No.1 but the same was declined vide single order dated 17.03.2020.

(Copy of departmental appeal dated 06.02.2020 along with impugned final order dated 17.03.2020 are attached as Annex: "N" and "O")

- 14) That the appellant also preferred an application dated 23.01.2020 to respondent No.1 for award of back benefits for the intervening period w.e.f. 22.07.2017 to 17.10.2019 upon which comments were called from the office of District Accounts Officer, Bannu.

It is pertinent to mention that District Accounts Officer vide letter dated 03.02.2020 addressed to respondent No.2 furnished his reply viz-a-viz grant of back benefits to the appellant. The District Accounts Officer referred to FR-54 which may deal with the issue of back benefit or the case may be referred to Law Department Peshawar for further guidance.

(Copy of application dated 23.01.2020 filed by the appellant for award of back benefit is attached as Annex: "P" while letter dated 25.01.2020 addressed by respondent No.2 to the District Accounts Officer, Bannu seeking guidance is attached as Annex: "Q" and reply dated 03.02.2020 furnished by District Accounts Officer is attached as Annex: "R")

- 15) That respondent No.2 vide order dated 17.02.2020 refused to grant back benefits to the appellant.

(Copy of impugned order dated 17.02.2020 is attached as Annex: "S")

- 16) That the appellant feeling aggrieved also preferred his departmental appeal dated 26.02.2020 to the Appellate

Authority i.e. respondent No.1 for grant of back benefits, but the same was also declined vide single order dated 17.03.2020.

(Copy of departmental appeal dated 26.02.2020 is attached as Annex: ~~T~~ while impugned final order dated 17.03.2020 is already attached is Para No.13).

- 17) That feeling aggrieved against impugned original order 21.01.2020, 17.02.2020 and final single order dated 17.03.2020 the appellant files this service appeal before this Hon'ble Services Tribunal within the stipulated period of 30 days as per mandate of law.

GROUND FOR APPEAL:

- a) That the impugned orders are against the law, facts and material available on record, hence not tenable in the eyes of law which is violative of Article 4, Article 10-A, Article 13 and Article 25 of the Constitution of Islamic Republic of Pakistan.
- b) That the appellant was exonerated from any liability or his involvement in the matter of civil dispute by the PWs whom statements were record during course of regular inquiry, hence the observation to the effect that the charge stand established against the appellant being misconceived, without substance and force. The findings of the Inquiry Officer, competent authority and Appellate Authority are the result of misreading or non-reading of the statements of witnesses, hence not tenable in the eyes of law and the impugned orders are liable to be set at naught alone on this ground.

It is pertinent to mention that PW-1 namely Guldar Ali Khan and PW-2 namely Sher Ayaz Khan also filed an application dated 09.12.2019 to withdraw complaint

No.11706 with a categorical statement that the appellant neither involved in the matter of arbitration regarding a civil dispute nor acted as Arbitrator/ Agent, therefore, keeping in view this categorical statement no justification existed on record to base any sort of incriminating findings by the authorities.

- c) That the malafide of the authorities is evident from the fact that though PW-1 and PW-2 filed an application to withdraw the complaint No.11706 but even then they were adamant to pursue with the baseless proceedings just to penalize the appellant at all cost having no sense at all in the light of established norms of justice, fair play and equity. When the complainant was not interested to pursue the proceedings with regard to complaint No.11706 then whether the same can be conducted on the command of the authorities or otherwise.
- d) That the impugned orders are also violative of the mandatory provisions of Article 13 of the Constitution of Pakistan, which in essence states that no one can be penalized or vexed twice for the same cause as the appellant was not only dismissed from his service who was reinstated by the judgment of this Hon'ble Tribunal and later-on in denovo proceedings conducted by the Inquiry Officer whereby penalties of CENSURE and declining back benefits to the appellant were imposed upon him in an intertwined shape not sustainable in the eyes of law, which is also violative of a reported judgment **2007 PLC (CS) 1234.**

It is pertinent to refer the relevant portion of the said judgment for ready reference of this Hon'ble Tribunal:

"Two punishments could not be awarded in intertwined shape for one charge. Such was

another illegality committed by the Appellate Authority". (2007 PLC (CS), 1234

It was also held in a judgment that;

"It would be unjust to deprive a civil servant of back benefits for the intervening period he remained out of job without any fault on his part. (2011 TD Service (b) Federal Service Tribunal. PLD 1992 SC 207, PLD 1993 SC 200, 2011 PLC (CS) 1665.

It was also held in a landmark judgment reported in 2013 SCMR 752 wherein it was held;

"Back benefits, increments and proforma promotion be granted to a civil servant upon his reinstatement in service"

- e) That the Inquiry Officer in its findings observed that no charges of dealing with stolen vehicle or dealing with counterfeit currency established against the appellant, hence he was exonerated on one hand while he was penalized on the other just on the basis of a complaint No.11706 which was withdrawn with an application dated 09.12.2019 filed by PWs 1 and 2. Hence the impugned orders are liable to be set aside on this ground as well.
- f) That the impugned orders are also violative of section 24-A of General Clauses Act as the competent authority failed to pass a speaking order with sound reasons.
- g) That additional grounds will be raised at the bar with kind permission of this Hon'ble Tribunal.

Keeping in view, what has been stated above, it is, therefore, humbly prayed to allow the instant Service Appeal by setting aside the penalty of **CENSURE** and

denying back benefits to the appellant with the prayer to set aside the impugned original order 21.01.2020, 17.02.2020 and final single order dated 17.03.2020 and the appellant may be awarded back benefits w.e.f. 22.07.2017 to 17.10.2019 in the light of reported judgment **2013 SCMR 752 and 2007 PLC (CS), 1234.**

Any other relief, which has not been specifically asked for and to whom the appellant is found entitled may also be granted.

Dated: 03.04.2020



Appellant
Ijaz Khan
Process Server

Through



Inayat Ullah Khan
Advocate High Court
LL. M (U.K)

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. ____/2020

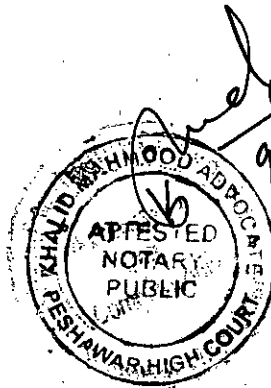
Ijaz Khan..... Appellant


Versus

District and Sessions Judge, Bannu & others..... Respondents

AFFIDAVIT

I, **Ijaz Khan** son of Mumtaz Khan, Process Server, Senior Civil Judge, Bannu R/O Bangi Khel, Sorani, P.O. Nizam Bazar, Tehsil and District Bannu do hereby affirm and declare on oath that the contents of the application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.




Deponent

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. ____/2020

Ijaz Khan..... Appellant

Versus

District and Sessions Judge, Bannu & others..... Respondents

ADDRESSES OF THE PARTIESAPPELLANT:

Ijaz Khan son of Mumtaz Khan
 Process Server
 Senior Civil Judge, Bannu
 R/O Bangi Khel, Sorani, P.O. Nizam Bazar,
 Tehsil and District Bannu

RESPONDENTS:

- 1) District and Sessions Judge, Bannu.
- 2) Senior Civil Judge, Bannu.



Appellant

through



Inayat Ullah Khan
 Advocate High Court
 LL.M (U.K)

Dated: 03.04.2020

(13)

Annex A

Office of the District Officer

Government of Punjab

No. P-23 / 1000 / 1953 dated 4-11-53

Subject: _____

In pursuance of the recommendation of the District Council, Bannu, of which the District Officer is a member, in the office of the District Officer, Bannu, the following candidates are hereby appointed to the post mentioned herein below:-

List of Candidates

- | S.No. | Name of Candidate |
|-------|---|
| 1- | Gulzar Khan s/o Khan Khan R/O Muslim Khan Bannu. (S.No. 6). |
| 2- | Muhammad Ali son of Mir Nawaz s/o Muhammad Jaud Khan, Bannu. (S.No. 70). |
| 3- | Muhammad Zindoor s/o Aslam Jaud Khan R/O Muslim Khan (S.No. 17). |
| 4- | Iqbal Khan son of Muhammad Khan resident of Bangi Khan Bannu. (S.No. 1). |
| 5- | Misrar Khan son of Mir Ali Khan s/o Akbar Khan Bannu (S.No. 80). |
| 6- | Muhammad Khan son of Akbar Nawaz Khan R/O Bada Mir Abbas (S.No. 96). |
| 7- | Muhammad Khan s/o Zafar Khan R/O Tanchi Bazar Bannu City. (S.No. 105). |
| 8- | Ahmedullah son of Muhammad Ghous Ali R/O Bakki Gate, Bannu City (S.No. 106). |
| 9- | Muhammad Khan son of Muhammad Khan R/O Levot Bangi Bannu (S.No. 104). |
| 10- | Saidullah Khan son of Muhammad Khan R/O Seri Banda Khel Bannu (S.No. 95). |
| 11- | Muhammad Khan son of Muhammad Khan R/O Bangi Khan Bannu. (S.No. 36). |
| 12- | Muhammad Khan son of Mir Jaud Khan resident of Akbar Khan Bannu. (S.No. 115). |
| 13- | Muhammad Khan son of Akbar Khan Resident of Jaidi Akbar No. 7, Bannu City (S.No. 24). |
| 14- | Adil Khan son of Khan Khan Resident of Ghoriwala Bannu (S.No. 94). |

(11...2

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No.833/SCJ, Bannu dated the, 4-11-03

OFFICE ORDER

In pursuance of the recommendation of the departmental selection committee, of which the meeting was held in the office of the undersigned for the selection to the posts of Process Servers, Chowkidar, Naib Qasids and Sweeper, the following candidates are hereby appointed against the posts mentioned herein below:-

POSTS OF PROCESS SERVERS**S.No. Name of Candidate**

- 1- Gul Rehman S/O Akram Khan R/O
Muslam Abad Bannu. (S.No.8).
2. Sarhad Ali son of Dil Nawaz R/O Mushar
Daud Shah Bannu (S.No.70).
- 3- Muhammad Zahoor S/O Allah Dad Khan
R/O Musa Khel (S.No.17).
- 4- Ijaz Khan son of Mumtaz Khan Residents
Of Bangi Khel Surani, Bannu. (S.No.1).
- 5- Afsar Khan son of Sher Ali Khan R/O
Azad Kakki Bannu. (S.No.88).
- 6- Rashid Khan son of Abdul Nawaz Khan
R/O Mir Abbas (S.No.96).
- 7- Mumtaz Khan S/O Zarwali Shah R/O
Tanchi Bazar Bannu City. (S.No.105).
- 8- Ameenullah son of Muhammad Ghous Ali
R/O Lakki Gate, Bannu City (S.No.106).
- 9- Wahid Murad Son of Bismillah Jan R/O
Bevoot Bandi Dak Bannu. (S.No.104).
- 10- Saifullah Khan son of Bismillah
R/O Seri Banda Khel Bannu (S.No.93).
- 11- Khalil Nawaz Son of Muhammad Nawaz
R/O Manja Khel Bannu. (S.No.36).
- 12- Raifullah Khan son of Mir Qad Ayaz Khan
Resident of Aimal Khel, Esakki, Bannu. (S.No.115).
- 13- Muhammad Aizal Son of Ahmad Yar Resident
Of Jaqid Abad No.1 Bannu City. (S.No.24).
- 14- Adil Khan son of Khan Zaman Resident of
Ghorwala Bannu. (S.No.34).

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POSTS OF CHAMKIDAR

S.No. Name of Candidate

- 1- Javed Muhammad Iqbal S/O
Lt Col Faraz Khan R/O SUKRI
Hafizan Bannu.
- 2- Syed Asghar Ali Khan S/O

Syed Tisyan Ali Khan resident of

Dharna Khel, Bannu.

POSTS OF NAIB QASID

S.No. Name of Candidate

- 1- Irfan Ali Khan son of Abdul Haq Khan
resident of Ghazni Khel Khara, Bannu
- 2- Muhammad Sharif Khan son of Gul Janan
Resident of Kot Sarara, Bannu.

POST OF SWEEPER

S.No. Name of Candidate

- 1- Munir Jacobson S/O Poran Jarg

R/O Muhallan Hussain Abad Bannu.

(X/P....3)

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14 A

POSTS OF CHOWKIDAR

No. Name of Candidate

- 1- Jalal Muhammad Ibrahim S/O
Umer Daraz Khan R/O Sukari
Hafizan Bannu.
- 2- Syed Asghar Ali Shah S/O
Syed Tibyan Ali Khan resident of
Dhirma Khel, Bannu.

POSTS OF NAIB QASID

S.No. Name of Candidate

- 1- Irshad Ali Khan son of Abdul Hamid Khan
Resident of Ghazaf Khel, Bannu
- 2- Muhammad Sharif Khan son of Gul Janan
Resident of Kot Barara, Bannu.

POST OF SWEEPER

S.No. Name of Candidate

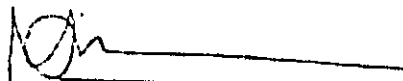
- 1- Munir Jaeosph S/O Poran Jarg
R/O Muhallah Hussain Abad Bannu.

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(15)

All the appointments shall be subject to the following terms and conditions:-

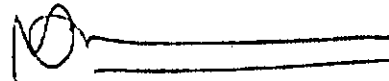
- 1) All the service rules for the time being enforced shall be applicable;
- 2) The appointment shall be subject to the medical fitness and the antecedents verified of the appointees.
- 3) The appointment for the post of process servers shall be purely on temporary basis and shall be liable to confirmation at the expiry of prescribed period of probation.
- 4) All the remaining appointment detailed herein above shall be subject to the Contract policy of the provincial government.
- 5) The appointees shall be required to report for duty within seven days failing which the appointment order shall be deemed to have extinguished/cancelled.


 (MUHAMMAD ZEB KHAN)
 SENIOR CIVIL JUDGE, CHAIRMAN DSC
 BANNU

NO. 834-856 / JCS Dated Bannu the 4/11/03

Copy of the above is forwarded to:-

- 1- The Honourable Registrar, Peshawar High Court, Peshawar.
- 2- The Honourable District & Sessions Judge, Bannu.
- 3- The District Accounts Officer, Bannu.
- 4- All the appointees by names.
- 5- Office copy.


 (Muhammad Zeb Khan)
 JCS/Expt: 3-30 Cr.P.C Bannu
 CHAIRMAN DSC

AMANAT

ATTESTED

ATTESTED

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BETTER COPY

All the appointments shall be subject to the following terms and conditions:-

- 1) All the Service Rules for the time being enforced shall be applicable.
- 2) The appointment shall be subject to the Medical Fitness and the antecedent verified of the appointees.
- 3) The appointment for the post of process servers shall be purely on temporary basis and shall be liable to confirmation at the expiry of prescribed period of probation.
- 4) All the remaining appointment detailed herein above shall be subject to the Contract policy of the Provincial Government.
- 5) The appointees shall be required to report for duty within seven days failing which the appointment order shall be deemed to have extinguished/cancelled.

(MUHAMMAD ZEB KHAN)
SENIOR CIVIL JUDGE, CHAIRMAN DSC
BANNU

No.834-856/SCJ dated Bannu the 04/11/03

Copy of the above is forwarded to:-

- 1- The Honourable Registrar,
Peshawar High Court, Peshawar.
- 2- The Honourable District & Sessions Judge,
Bannu.
- 3- The District Accounts Officer, Bannu.
- 4- All the appointees by names
- 5- Office copy.

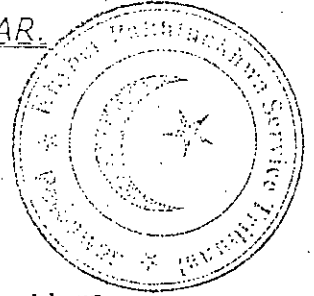
(Muhammad Zeb Khan)
/SCJ/Empr:S-30 Cr.PC Bannu
Chairman DSC

ATTESTED

Annex "B" (16)

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BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.



Service Appeal No. 1232 /2013

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1270

Dated 07-11-2017

Ijaz Khan son of Mumtaz Khan

Ex-Process Server

Senior Civil Judge, Bannu

R/O Bangi Khel, Sorani, P.O. Nizam Bazar,

Tehsil and District Bannu..... Appellant

Versus

1) District and Sessions Judge, Bannu.

2) Senior Civil Judge, Bannu..... Respondents

Appeal u/s 4 of the N.W.F.P Service Tribunal Act, 1974 against the impugned order dated 22.07.2017 whereby the learned Senior Civil Judge, Sultan Hussain, being the competent authority imposed the major penalty of dismissal from service under Rule4(b) Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011, on charges of corruption and corrupt practices against which departmental appeal dated 27.07.2017 was filed before the Appellate Authority, which has not been responded despite lapse of statutory period of 90 days, hence presents this appeal within 30 days after expiry of 90 days period which is well within time.

ATTESTED

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[Signature]
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Filed to-day
Registrar
2/11/17

(17)

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Prayer:

On acceptance of this service appeal, the impugned order dated 22.07.2017 may kindly be set aside and the appellant may please be reinstated in service with all arrears/ consequential back benefits. Any other relief to whom the appellant is found entitled during course of hearing may also be granted.

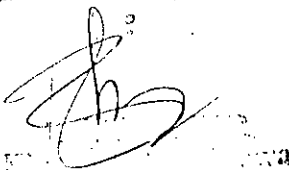
Respectfully Sheweth;

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

- 1) That the appellant was appointed as Process Server in BPS-3 on 04.11.2003 by order of Senior Civil Judge, Bannu. (Copy of appointment order is attached as Annex: "A")
- 2) That the appellant has more than 14 years service at his credit at the time of imposition of major penalty of dismissal from service.
- 3) That respondent No.2 Senior Civil Judge, Bannu namely Sultan Hussain issued memo of allegation vide No.978 dated 22.07.2017 wherein allegation of corruption and corrupt practices were alleged against the appellant and thereafter show cause notice No.977 dated 12.07.2017 was also issued to him by repeating the same allegation as mentioned above in which reply was called from the appellant with further observation as to why the major penalty of removal or dismissal from service as provided in section 4(i)(b)(iii)&(iv) should not be imposed upon you. (Copy of memo of allegation dated 22.07.2017 and show cause notice dated 12.07.2017 are attached as Annexure

"B and C")

ATTESTED



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- 4) That the appellant in response to the show cause notice dated 22.07.2017, submitted a detailed reply dated 17.07.2017 before respondent No.2 by refuting the allegation of **"corruption and corrupt practices by accepting gratifications, other than legal remuneration and having persistent reputation of being corrupt and living beyond ostensible means of income"**. (Copy of reply dated 17.07.2017 is attached as Annexure "D").
- 5) That the appellant preferred his departmental appeal dated 27.07.2017 against the impugned order dated 22.07.2017 before the appellate authority, which has not been responded despite lapse of statutory period of 90 days, hence files this service appeal before this Hon'ble Services Tribunal within the stipulated period of 30 days as per mandate of law. (Copy of departmental appeal dated 27.07.2017 filed before Appellate Authority is attached as Annexure "E" and impugned order dated 22.07.2017 is attached as Annexure "F").

GROUNDS FOR APPEAL:

That the appellant being aggrieved from the impugned order dated 22.07.2017 referred above, prefers the instant service appeal on the following amongst other grounds for his reinstatement in service with all consequential back benefits/ arrears of pay.

- a) That the impugned order of respondent No.2 is against the law, facts and material available on record, hence not tenable in the eyes of law and also violative of Article 4 of the Constitution of Islamic Republic of Pakistan.

ATTESTED



K. M. Khan
Secretary
Peshawar

ATTESTED

- b) That the impugned order is also violative of section 24-A of General Clauses Act as the competent authority failed to pass a speaking order with reasons.
- c) That competent authority has initiated the summary proceedings on the basis of vague and unspecific allegations and inquiry was dispensed with without assigning any reason or cause while making observations that the undersigned is corrupt and ill-reputed. Such remarks should have been avoided in the absence of any supporting material, which could be only collected during holding a regular inquiry.
- d) That even no **final show cause notice** was served upon the appellant nor a **meaningful opportunity of personal hearing** was afforded to the appellant which is a flagrant violation of Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011 and also offending the well recognized principles of natural justice which by itself sufficient to vitiate the entire proceedings carried out against the appellant at his back.
- e) That no statement of allegation was supplied nor any charge sheet was served upon the appellant, which is a glaring illegality and bypassing the mandatory procedure given in the Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011. It is pertinent to mention that the whole disciplinary process was conducted by respondent No.2 in haste, as he served the memo of allegation, show cause notice and passed the impugned dismissal order on the basis of allegations of corruption and corrupt practice which could not be warranted/ sustainable at all within the four corners of law. The competent authority cannot act as complainant/ inquiry officer/ imposing the penalty of dismissal at one and the same time as he was legally

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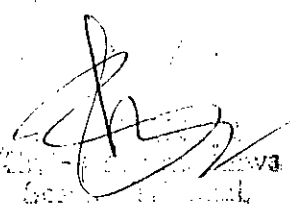
ATTESTED


Khyber Pakhtunkhwa
State Tribunal,
Peshawar

required to either constitute an inquiry committee or to conduct inquiry through an inquiry officer and thereafter on the basis of the finding of inquiry committee or inquiry officer the proposed penalty could either be confirmed or otherwise.

- f) That the show cause notice referred to *personal knowledge* and *discrete inquiry report*. It is pertinent to mention that there is no room/ scope for personal knowledge or discrete inquiry report in Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011, therefore, any finding on the basis of such inquiry report or personal knowledge cannot be equated with the *standard of proof* required to be brought on record viz-a-viz the allegations. It is further stated that whenever there are disputed questions of facts, holding of regular inquiry cannot be dispensed with, as principle of natural justice requires to provide sufficient opportunity of defence and opportunity of cross examination. Nobody can be penalized without adhering to the concept of due process of law, which also offends the mandatory provisions of *Article 10-A of the Constitution of Islamic Republic of Pakistan*, therefore, the show cause notice and the impugned dismissal order alone is not tenable on this ground.
- g) That no specific order to the effect to dispense with the regular inquiry passed by the competent authority, therefore, an element of bias could not be ruled out altogether in the given facts and circumstances of the case. Even no reason of dispensing with the regular inquiry mentioned in the show cause notice.
- h) That the competent authority was required under the rules to conduct a regular inquiry through an inquiry officer or inquiry committee which procedure has altogether has been scrapped and acted as complainant, inquiry officer and judge by imposing the penalty of dismissal from service in

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Peshawar


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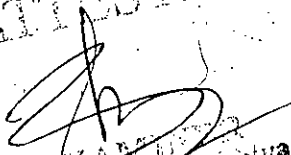
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a fashion alien to law which functions could not be validly undertaken by the competent authority alone. Hence the entire proceedings from start to the end stand vitiated/ void ab-initio.

- i) That even no mandatory final show cause notice was served upon the appellant before imposition of major penalty hence the impugned order cannot be sustainable alone on this ground as well. It is further stated that under the rules the competent authority could only dispensed with an inquiry proceeding if the accused civil servant is involved to endanger the security of Pakistan or entered into plea-bargain under any law for the time being in force or involved in subversive activities, otherwise, the procedure of regular inquiry cannot be dispensed with hence the referred provision of law in the impugned show cause notice/ order has been misconstrued by the competent authority.
- j) That no inquiry report as referred to, in the show cause notice or incriminating material which were used against the appellant were provided, which need to be disclosed to him during holding a regular inquiry to explain his position and rebut the same. It is settled law that when a document was relied upon for the purpose of arriving at a certain finding without disclosing the same to the appellant, then any finding on such basis without disclosing to the appellant would be against the norms of justice, fair play/ equity. Thus, the documents relied upon, if any, in one sided/ exparte manner would offend not only the established principles of natural justice but also violating the due process of law which concept deeply embedded in our judicial system to administer justice.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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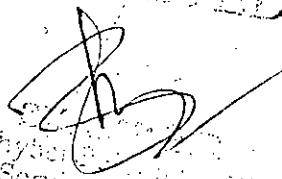
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k) That no charges have been established in the fact finding inquiry conducted by the Hon'ble ADJ-III, Bannu as no incriminating evidence whatsoever has been attached with the show cause notice. It is further stated that fact finding inquiry is not a substitute of a regular inquiry where the opportunity of cross examination is given to the accused civil servant besides that if there is any incriminating material, it is to be provided prior to the initiation of inquiry since no such incriminating documents relating to allegations were provided to the appellant therefore, the process of fact finding inquiry as referred to in the impugned order has been carried out against the norms of justice. It is further stated that whenever there are disputed questions of fact, holding of regular inquiry cannot be dispensed with as principles of natural justice requires to provide sufficient opportunity of defence and opportunity of cross examination. Nobody can be penalized without adhering to the due process of law, which also offends the **mandatory provision of Article 10(A) of the Constitution of Islamic Republic of Pakistan**, therefore, the show cause notice alone on this ground is not tenable.

l) That the allegation of dealing with stolen vehicle is false, frivolous and without any substance, no record whatsoever has been annexed with the show cause notice to establish that the appellant has ever been involved in dealing with stolen vehicles. No FIR or any judgment of a competent court of law has been referred, which tentatively indicates that the undersigned has any nexus with such like business. It is further stated that the charge of dealing with forged currency is also baseless, having no substance at all as nothing incriminating has been brought on record to establish this allegation.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

m) That the show cause notice and impugned order further refers to the recommendation of Anti Corruption Committee Session Division Bannu but ironically no such report was provided to the appellant to exactly know about the nature of allegations and the nature of evidence in support of the allegations, which is once again a flagrant violation of the provisions of **Article 10-A** of the Constitution of Pakistan and the *principles of natural justice*, which are part and parcel of all judicial or executive proceedings. The recommendation and the inquiry conducted by the Hon'ble ADJ-III, Bannu is also violative of the rules and regulations regarding initiation of disciplinary proceedings against the employees/ staff of the establishment of Senior Civil Judge, Bannu on the ground that Senior Civil Judge, being the competent authority in this case, then the inquiry need to be referred to a Magistrate/ Civil Judge to conduct a regular inquiry instead of a fact finding inquiry conducted by the Hon'ble ADJ-III, Bannu who is superior in authority than the competent authority, hence all the proceedings carried out on the basis of fact finding inquiry is void ab-initio.

It is settled preposition of law that when a thing requires to be done in a particular manner it had to be done in that manner, otherwise the same would be a nullity in law.

As far as the complaint filed against the appellant to the Peshawar High Court, Peshawar, which was referred to the District and Sessions Judge, Bannu for further proceedings and the same was marked for inquiry to ASJ-III, Bannu and in that inquiry statements were recorded and opportunity of cross examination was provided to me, but nothing was established against the appellant regarding his involvement via-a-viz the allegations.

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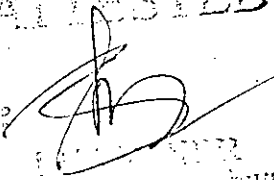
Therefore, the show cause notice as referring to the fact finding inquiry having no substance and force at all. Even, the appellant had applied for provision of attested copies of the statement of witnesses, complaint and findings of fact, finding report but no such documents were provided, hence an element of bias could not be ruled out altogether in carrying out the proceedings. It is pertinent to mention that the appellant did not take part in any arbitration proceedings between the parties of the complaint and in this regard it is stated that it is purely a civil nature matter, which was resolved by the intervention of Ulma-e-Karam of the locality and a decision was pronounced. If there is any apprehension over the decision pronounced by Ulma-e-Karam on the subject matter, the aggrieved parties can still resort to civil court to properly initiate proceedings in the form of civil suit, therefore, to initiate departmental inquiry regarding the involvement of appellant in the matter, which is purely civil in nature, cannot be justified as no departmental proceedings can be initiated against the appellant on that basis. ***It is pertinent to further state that the aggrieved party has also withdrawn his complaint and also stated to the effect that the undersigned has no role whatsoever in the matter.***

ATTESTED

Note:

That the appellant filed application to the competent authority for provision of the inquiry file along with incriminating evidence but the applications were regretted and no such inquiry report, fact finding inquiry report or other relevant incriminating evidence which had been used were provided to the appellant, hence all the proceedings were conducted at his back. (Copies of applications are attached).

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Khalid Ahmad
Services Tribunal,
Peshawar

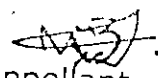
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n) That any other ground will be raised at the bar with kind permission of this Hon'ble Tribunal.

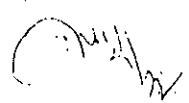
Keeping in view, what has been stated above, it is, therefore, humbly requested the impugned order dated 22.07.2017 may kindly be set aside and the appellant may please be reinstated in service with all arrears of pay/ consequential back benefits.

Any other relief, which has not been specifically asked for and to whom the appellant is found entitled may also be granted.


Appellant
Ijaz Khan
Ex-Process Server

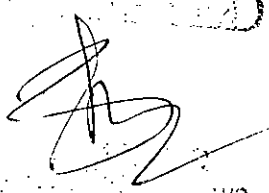
Dated: 06.11.2017

Through


Inayat Ullah Khan
Advocate High Court
LL. M (U.K)

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Attesting Officer

Annex

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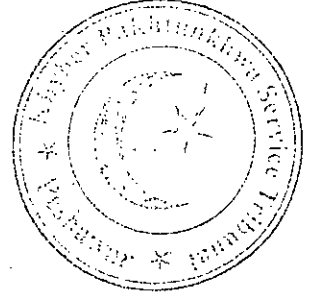
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1232/2017

Date of Institution ... 07.11.2017

Date of Decision ... 17.10.2019



Ijaz Khan S/O Mumtaz Khan,
Ex-Process Server, Senior Civil Judge, Bannu,
R/O Bangi Khel, Sorani, P.O. Nizam Bazar, Tehsil and District Bannu.
... (Appellant)

VERSUS

District and Sessions Judge, Bannu and one other. ... (Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

For appellant.

MR. USMAN GHANI,
District Attorney

For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

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

ATTESTED

ATTESTED

ARGUMENTS.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

02. Learned counsel for the appellant argued that he was appointed as Process Sarver (BPS-3) on 04.11.2003 and has more than fourteen years service at his credit. Through a memo of allegations dated 12.07.2017 some unfounded and frivolous allegations were leveled against him and thereafter, show cause notice dated 12.07.2017 was served on the appellant to which he replied accordingly. That major penalty of dismissal from service was imposed on him vide impugned order dated 22.07.2017. He filed departmental appeal on 27.07.2017, which remained un-answered, hence, the present service appeal. Under the rules in case

major penalty is to be awarded to a civil servant, regular enquiry should be conducted. Though show cause notice was served on him but reasons for dispensing with regular enquiry were not mentioned in it and as such relevant provision of E&D Rules was violated. He was not treated according to Article-4 and 10-A of the Constitution 1973. Moreover, the appellant was not confronted with a single piece of evidence and his previous conduct was made basis for the present punishment. The allegations were vague and evasive. No one can be punished on the basis of discrete enquiry or source report. He relied on case law reported as 2009 SCMR 339, 2004 SCMR 294, 2004 PLC(C.S) 959, 2012 TD (Services) 391, 2009 SCMR 329, 2011 PLC (C.S) 387, 1997 SCMR 1543 and 2007 SCMR 1726.

03. Learned District Attorney argued that the appellant had a tainted service record and was previously awarded punishment on similar allegations. An application containing allegations leveled by some private person was forwarded from the Peshawar High Court to the District and Sessions Judge, Bannu wherein conduct of the appellant was vividly explained. First of all a fact finding enquiry was conducted in which allegations leveled against the appellant were proved and thereafter show cause notice was served on him. As allegations against the appellant had been proved so there was no need of conducting formal enquiry. Major penalty of dismissal from service was awarded to him after observance of all codal formalities.

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CONCLUSION

04. The present service appeal relates to award of major penalty of dismissal from service to the appellant vide impugned order dated 22.07.2017. This impugned order was issued on the strength of show cause notice dated 12.07.2017 served on


Signature
 District and Sessions Judge
 Bannu

the appellant. Perusal of the show cause notice revealed that certain findings/recommendations of the anti-corruption committee and preliminary enquiry conducted by the respondents was the foundation stone of the said notice. It is quite strange that these allegations were vague, evasive, inconclusive and unspecified. Moreover, as laid down in Sub-Rule-(b) of Rule-5 of E&D Rules 2011. If the competent authority decides to dispense with regular enquiry then reasons will have to be recorded in writing which was not done in this case. Moreover, major penalty was awarded to the appellant on the basis of show cause notice and the same goes against countless judgments of superior courts followed by this Tribunal that in case major penalty is to be awarded then regular enquiry should invariably be conducted (2004 SCMR 294). The dictum contained in 2009 SCMR 339 can also be attracted in the case in hand.

~~ATTESTED~~

05. Moreover, his previous conduct was made a basis for award of punishment in the present case. Needless to mention that the previous conduct for which an appellant has already been penalized could not be made a ground for penalty/punishment, as it amounts to double jeopardy and goes against Article 13 of the 1973 Constitution (2004 PLC (C.S) 959). Furthermore, superior courts also held that no one can be punished on the basis of discrete enquiry/information and source report (2011 PLC (C.S) 387). In these circumstances we are of the view that the appellant was not treated according to law and rules and in order to ensure proper dispensation of justice there is a need for proper enquiry against the appellant under E&D Rules 2011. He should not only be fully associated with the proceedings but also provided proper opportunity of defense, as enshrined in Article-4 and 10(A) of the Constitution of 1973.

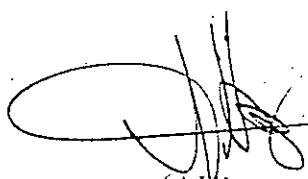
ATTESTED

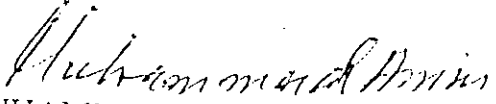

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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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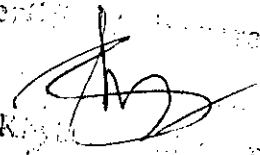
39

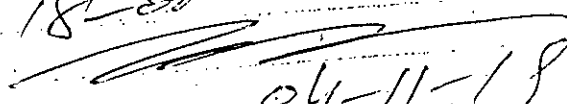
06. As a sequel to the above, the present appeal is accepted, impugned order dated 22.07.2017 is set aside and the appellant is reinstated in to service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules within a period of 90 days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.


 (AHMAD HASSAN)
 Member


 (MUHAMMAD AMIN KHAN KUNDI)
 Member

ANNOUNCED
 17.10.2019

Centre

 Khyber Pakhtunkhwa
 State Tribunal,
 Peshawar

Date of Birth: 18-10-69
 Number of: 1600
 Copy: 1800
 Urgency: 18-00
 Name: 
 Date: 04-11-18
 Date of receipt: 04-11-18

ATTESTED

OFFICE OF THE SENIOR CIVIL JUDGE, BANNU

OFF: 0928-9270195
FAX: 0928-9270195

scjbannu@gmail.com

No. 1034 / SCJ

DATED AT BANNU THE 09 / 11 / 2019

To, Mr. Muhammad Ijaz,
Process Server.

Subject: NOTICE

Whereas as per complaint No, 11706 communicated vide Peshawar High Court, Peshawar letter No. 3529/HRC, dated 02.06.2017, inquiry was initiated on the direction of Hon'ble District & Sessions Judge, Bannu. In this regard Special Report of learned ASJ-III/Chairman Anti-Corruption Committee was sent to the learned Senior Civil Judge, Bannu. After inquiry proceedings, Show Cause notice and memo of allegations were issued to you vide this office order No. 977 & 978, dated 12.07.2017 respectively, and you were directed to submit reply, for which your reply received on 17.07.2017. The Inquiry was dispensed with and Final Show Cause Notice was issued to you. The allegations/charges leveled against you were proved and major penalty of dismissal of service was imposed upon you vide this office order bearing Endst: No. 996-1000/SCJ, dated 22.07.2017. You filed a departmental appeal before Hon'ble District & Sessions Judge, Bannu on 22.07.2017, in which the proceedings were not completed within stipulated period and remained un-answered. You filed an appeal for reinstatement before Khyber Pakhtunkhwa Service Tribunal Peshawar vide Service Appeal No. 1232/2017, dated 07.11.2017, and your appeal has been accepted on 17/10/2019. After acceptance of appeal by Khyber Pakhtunkhwa Service Tribunal Peshawar dated 17.10.2019, your services are reinstated with the direction to conduct de-novo inquiry strictly in accordance with law and rules.

In view of complaint No.11706, your explanation has already been called and Show Cause notice dated 12.07.2017 was issued. Your reply to the show cause notice is available on the file. Therefore, you are served with Show Cause Notice already communicated to you to explain whether you rely on the reply already submitted or would like to submit fresh reply. Your written reply should reach to this office within 3 days positively.

ATTESTED

30 MAR 2020

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Lower Courts Bannu

Senior Civil Judge
Bannu

[Handwritten signature]
11/11/19

To

INQUIRY OFFICER / CIVIL JUDGE NO. IV Bannu.
Office of Senior Civil Judge,
Bannu

Subject:

REPLY TO THE SHOW CAUSE NOTICE
NO.1034/SCI DATED 09.11.2019

Reference to your show cause notice No. 1034/SCI dated 09.11.2019, the reply is hereby submitted by explaining my position viz-a-viz the alleged allegations contained therein.

With utmost regard it is submitted that Senior Civil Judge namely Sultan Hussain served me with an earlier show cause notice No.977 dated 12.07.2017 containing therein the allegation of "*corruption and corrupt practices by accepting gratifications, other than legal remuneration and having persistent reputation of being corrupt*".

Now through the instant notice as referred to in the heading of this reply the allegation to the effect that complaint No.11706 communicated vide Peshawar High Court, Peshawar letter No.3529/HRC, dated 02.06.2017 has been reiterated against which the undersigned previously submitted a detailed reply dated 17.07.2017 wherein all the baseless, concocted and unsubstantiated allegations were denied with sound reasoning therefore the previous reply may kindly be considered as part and parcel of this reply.

It is once again stated that the previous allegations to the effect that the undersigned was involved in dealing with stolen vehicles and forged currency notes are self negated and rebutted from the official record existed in the office of Senior Civil Judge and to this effect a report was already submitted which indicates that from the alleged allegation of dealing with stolen vehicles was dismissed by the

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31 JAN 2020

inquiry officer Naeem Ullah Jadoon, CJ-III Bannu by exonerating the undersigned vide report dated 25.04.2016.

It is pertinent to mention that the same report also indicates that the undersigned was Honorably Acquitted vide judgment dated 13.12.2011 from case FIR No. 430 dated 06.07.2010 U/S 489-B PPC registered at P.S Jangal Khel Kohat.

Now reverting back to the complaint No.11706 communicated to the Peshawar High Court, it is most humbly submitted that the fresh notice dated 09.11.2019 refer to the fact finding inquiry conducted by ASJ-III/ Chairman Anti Corruption Committee and thereafter a special report was sent to the office of senior Civil Judge Bannu but no regular inquiry was conducted as was required under the E&D Rules 2011, it is settled law that whenever there are disputed allegations of corruption and corrupt practices then no regular inquiry can be dispensed with nor any punishment can be passed on the basis of merely issuing a show cause notice therefore the previous departmental proceedings initiated against me were set aside by a judgment of Honorable Provincial Service Tribunal Khyber Pakhtunkhwa Peshawar and the case was referred back to departmental hierarchy for conducting de-novo inquiry.

It is once again stated that the alleged allegations as contained in complaint No.11706, nothing was established against me regarding my involvement viz-a-viz the allegations. Therefore the show cause notice as referring to the fact finding inquiry and special report having no force and substance at all.

It is important to mention that I did not take part in any arbitration proceedings between the parties of the complaint and in this regard it is stated that it was purely a civil nature matter, which was resolved through intervention of the Ulama e Karam of the locality and the decision was pronounced that the same dispute was amicably resolved.

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31 JAN 2020

(Copy of decision of Ulama e Karam is attached with the instant reply).

It is further stated that if there is any apprehension over the decision pronounced by the Ulama e Karam, the deferring parties of the complaint could resort to filing a civil suit before the Court of competent jurisdiction and to resolve the same through Court. No departmental inquiry or disciplinary proceedings regarding my involvement in the matter can be initiated against me which is purely a civil dispute.

It is also important to mention that the complainant Gul Dar Ali and Muhammad Sheraz Khan had already withdrawn the alleged complaint No.11706 preferred to Peshawar High Court on 14.06.17 before Muhammad Tahir Aurangzeb Additional Sessions Judge-III/ Chairman Anti Corruption Committee Bannu.

Both the complainants to this effect recorded their joint statement on 14.06.2017 and stated to the effect that the matter had been resolved through the elders of the locality therefore, the complaint which was made to the Chief Justice Honorable Peshawar High Court Peshawar be withdrawn accordingly.

(Copy of application dated 14.06.2017 and joint statement dated 14.06.2017 are attached with this reply for ready reference).

Apart from the above, the SHO Muhammad Riaz P.S Basia Khel Tehsil and District Bannu, Haji Noor Sardar and Gul Naqeeb Khan who were also arrayed as respondents in the complaint No.11706 also made their replies that the issue was resolved through intervention of the elders of the locality and in this regard also stated in his reply that on verbal direction of DPO, both the parties were charged U/S 107/150 that no law and order situation be created and all of them did not indicate the name of undersigned that whether he has played any role in the arbitration proceedings.

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31 JAN 2020

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Lower Court Bannu

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In this backdrop, no proceedings were initiated against the SHO, Haji Noor Sardar, Gul Naqeeb and Naqeebullah Shah.

It is pertinent to mention that keeping in view the afore referred background of the case, it seems that the alleged complaint No. 11706 is the outcome of malafide, ill-will and the undersigned had been unnecessarily falsely implicated without having any role in the matter hence the undersigned being innocent vehemently denies the vague, non specific and unsubstantiated allegations as contained in the previous show cause notice and in the fresh notice, fact finding inquiry and special report, therefore it is earnestly requested that the intended further de-novo proceedings may kindly be withdrawn in the best interest of justice, fair play and equity by exonerating the undersigned.

Ijaz Khan
Process Server
Senior Civil Judge, Bannu

Dated: 29/11/2019

- 1- Registration No. 361
- 2- Date of Presentation of Application 31-1-2020
- 3- Date of Receipt of the file 31-1-2020
- 4- Date of Preparation of copy 31-1-2020
- 5- Date of Delivery of copy 31-1-2020
- 6- No. of copies / words 7
- 7- Ordinary Fee 7
- 8- Urgent Fee _____
- 9- Total Fee _____
- 10- Signature of Copyist [Signature]

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31 JAN 2020

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Lower Court Bannu

Annex "F"

35

No. _____ / CJ-VI DATED AT BANNU THE _____ /11/2019

To

Mr. Ijaz Khan,
Process Server, SCJ, Bannu.Subject: CHARGE SHEET

I, KALEEM ULLAH, Civil Judge-VI, Bannu, as Inquiry Officer, hereby charge you, Mr. Ijaz Khan, Process Server of the establishment of Senior Civil Judge, Bannu as follows:

That you, while posted as Process Server, committed the following irregularities:

- (i) That the as per complaint No. 11706 of Mr. Gul Dar Ali Khan etc communicated to Hon'ble Peshawar High Court, Peshawar vide letter No. 3529/HRC, dated 02.06.2017, you were involved in corruption and corrupt practices having persistent reputation of being corrupt, being involved in dealing with stolen vehicles, forged currency notes and living beyond your ostensible means of income.
- (ii) That you have been guilty of corruption and corrupt practices by getting involved in malpractices leading to gabbing of gratifications, other than legal remuneration, from the litigants by misusing your official position and under the colour of your of office.
- (iii) That your conduct has been pre judicial to the good order and service discipline and your bearing and demeanors are highly unbecoming of a Civil Servant and a Gentleman, thereby earning bad name for the institution.

2. By reason of the above, you appear to be guilty of misconduct under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. Your written defence, if any, should reach the this court within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

4. Intimate whether you desire to be heard in person or through counsel of your choice.

5. A statement of allegations is enclosed.

ATTESTED

30 MAR 2020

(KALEEM ULLAH)
Civil Judge-VI
Bannu

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Lower Courts Bannu

Received
21/11/19

"Annex G

(36)

Office of Civil Judge-VI/ Inquiry Officer,
Bannu

0-07

pl
09/12/2019

Subject: REPLY TO THE CHARGE SHEET NO.NIL DATED
26/11/2019.

Reference your charge sheet No.Nil dated 26 /11/2019, the reply is hereby submitted by explaining my position viz-a-viz the allegation contained therein.

With utmost regard it is submitted that your good-self has served me with a charge sheet containing therein the allegation of "*corruption and corrupt practices by accepting gratifications, other than legal remuneration and having persistent reputation of being corrupt*". Besides the above allegations it is also alleged that as per complaint No.11706 one Mr.Gul Dar Ali Khan etc communicated to the Hon'ble Peshawar High Court, Peshawar vide letter No.3529/HCC dated 02.06.2017 and it is further alleged in the charge sheet that the undersigned is involved in dealing with stolen vehicles, forged currency notes, hence living beyond my ostensible means of income. It is further alleged that the undersigned's conduct is pre-judicial to good order and service discipline.

It is stated that your good-self has initiated the inquiry proceedings on the basis of vague and unspecific allegations without assigning any reason or cause, while making observations that the undersigned is corrupt and ill-reputed. Such remarks should have been avoided in the absence of any supporting material, which could be only collected during holding a regular inquiry.

Now through the instant charge sheet as referred to in the heading of this reply, the allegation to the effect that complaint No.11706 communicated vide Peshawar High Court, Peshawar letter No.3529/HRC, dated 02.06.2017 has been reiterated against which the undersigned previously submitted a detailed reply dated 17.07.2017 wherein all the baseless, concocted and unsubstantiated allegations were denied with sound reasoning, therefore the

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31 JAN 2020

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previous reply may kindly be considered as part and parcel of this reply.

It is once again stated that the previous allegations to the effect that the undersigned was involved in dealing with stolen vehicles and forged currency Notes are self negated and rebutted from the official record existed in the office of Senior Civil Judge and to this effect a report was already submitted which indicates that from the alleged allegation of dealing with stolen vehicles was dismissed by the inquiry officer Naeem Ullah Jadoon, CJ-III Bannu by exonerating the undersigned vide report dated 25.04.2016.

It is pertinent to mention that the same report also indicates that the undersigned was Honorably acquitted vide judgment dated 13.12.2011 from case FIR No. 430 dated 06.07.2010 U/S 489-B PPC registered at P.S Jungle Khel Kohat.

Now reverting back to the complaint No.11706 communicated to the Peshawar High Court, Peshawar, it is most humbly submitted that the fresh notice dated 09.11.2019 and this charge sheet refer to the fact finding inquiry conducted by ASJ-III/ Chairman Anti Corruption Committee and thereafter a special report was sent to the office of senior Civil Judge Bannu but no regular inquiry was conducted as was required under the E&D Rules 2011, it is settled law that whenever there are disputed allegations of corruption and corrupt practices then no regular inquiry can be dispensed with nor any punishment can be passed on the basis of merely issuing a show cause notice therefore the previous departmental proceedings initiated against me were set aside by a judgment of Honorable Provincial Service Tribunal Khyber Pakhtunkhwa Peshawar and the case was referred back to departmental hierarchy for conducting de-novo inquiry.

It is once again stated that the alleged allegations as contained in complaint No.11706, nothing was established against me regarding my involvement viz-a-viz the allegations. Therefore the

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charge sheet and earlier show causes notices referring to the fact finding inquiry and special report having no force and substance at all.

It is important to mention that I did not take part in any arbitration proceedings between the parties of the complaint and in this regard, it is stated that it was purely a civil nature matter, which was resolved through intervention of the Ulama-e-Karam of the locality, hence the decision was pronounced and the same dispute was amicably resolved.

(Copy of decision of Ulama e Karam is attached with the instant reply).

It is further stated that if there is any apprehension over the decision pronounced by the Ulama-e-Karam, the deferring parties of the complaint could still resort to filing a civil suit before the Court of competent civil jurisdiction and to resolve the same through Court.

No departmental inquiry or disciplinary proceedings regarding my involvement in the matter can be initiated against me, which is purely a civil dispute.

It is also important to mention that the complainant Gul Dar Ali and Muhammad Sheraz Khan had already withdrawn the alleged complaint No.11706 preferred to Peshawar High Court on 14.06.17 before Muhammad Tahir Aurangzeb, Additional Sessions Judge-III/ Chairman Anti Corruption Committee Bannu.

Both the complainants to this effect recorded their joint statement on 14.06.2017 and stated to the effect that the matter had been resolved through the elders of the locality therefore, the complaint which was made to the Chief Justice Honorable Peshawar High Court Peshawar be withdrawn accordingly.

(Copy of application dated 14.06.2017 and joint statement dated 14.06.2017 are attached with this reply for ready reference).

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31 JAN 2020

Apart from the above, the SHO Muhammad Riaz P.S Basia Khel, Tehsil and District Bannu, Haji Noor Sardar and Gul Naqeeb Khan who were also arrayed as respondents in the complaint No.11706 also made their replies that the issue was resolved through intervention of the elders of the locality and in this regard also stated in his reply that on verbal direction of DPO, both the parties were charged U/S 107/150 that no law and order situation be created and all of them did not indicate the name of undersigned that whether he has played any role in the arbitration proceedings.

In this backdrop, no proceedings were initiated against the SHO, Haji Noor Sardar, Gul Naqeeb and Naqeebullah Shah.

It is pertinent to mention that keeping in view the afore referred background of the case, it seems that the alleged complaint No. 11706 is the outcome of malafide, ill-will and the undersigned had been unnecessarily falsely implicated without having any role in the matter, hence the undersigned being innocent vehemently denies the vague, non specific and unsubstantiated allegations as contained in the previous show cause notice, in the fresh notice, fact finding inquiry, special report and in this charge sheet, therefore it is earnestly requested that the intended further de-novo proceedings may kindly be withdrawn in the best interest of justice, fair play and equity by exonerating the undersigned.

Ijaz Khan
 Process Server
 Senior Civil Judge, Bannu

Dated: 06/12/2019

- 1. Registration No: 361
- 2. Date of Presentation of Application 31-1-2020
- 3. Date of Receipt of the file 31-1-2020
- 4. Date of Preparation of copy 31-1-2020
- 5. Date of Delivery of copy 31-1-2020
- 6. No. of copies / words 4
- 7. Ordinary Fee 1
- 8. Urgent Fee 1
- 9. Total Fee 2
- 10. Signature of Copyist A.S

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 AS
 31 JAN 2020
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 Lower Court Bannu

لعدالت ضاب۔ انکوائری صوبہ / سول جج صاحب کے بنوں

"H"

33

Annex

(40)

انکوائری بنوں / اعجاز خان دم

07-08-19

درخواست نمبر 11706 کے تھریٹنگ

بوجوہات ذیل

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بنوں کے تھریٹنگ کے بارے میں عرض ہے

بنوں کے تھریٹنگ کی جانب سے حفظ اللہ نے بنوں کے تھریٹنگ کے بارے میں عرض ہے

بنوں کو مارا گیا تھا

یہ کہ سائلوں نے بدین و ہم تھریٹنگ نمبر 11706 دائر کیا تھا

تھریٹنگ کے بارے میں

یہ کہ اعجاز خان و لہذا بنوں کے تھریٹنگ کے بارے میں عرض ہے

ماہینہ مارچ یا اپریل کے تھریٹنگ کے بارے میں

مفتی صاحب اللہ شاہ الہ نعتی رضوان پر تھریٹنگ کے

تھریٹنگ کے بارے میں

اس تھریٹنگ کے بارے میں

تھریٹنگ کے بارے میں

تھریٹنگ کے بارے میں

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تھریٹنگ کے بارے میں

17 days, thin 30 iod which

ATTESTED

30 MAR 2020

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مل دار علی خان و شہزادہ اعجاز خان تھریٹنگ کے بارے میں

11101-1447870-7

0332-9764523

Handwritten signature

مشترکہ بیان محمد شہزاد ایاز رضا ولد بلقیار خان سکنہ
ڈاکٹر حیل ڈاکخانہ تنظیم بازار بنوں (ان) محل دار علی خان ولد
ایاز خان سکنہ پینک شہزادہ خان مارک اسماعیل حیل
تحویل وصلہ بنوں

حلفاً بیان کرتے ہیں کہ ہم سائلان اور عدیمان جو کمپنٹ
برخلاف مسئول الیم غیر تاکہ پشاور ہائی کورٹ کے
چیف جسٹس صاحب کو بھجوا دی تھی جو عدالت امتیاز
کو مارک ہوئی ہے اور کمپنٹ نذا ڈاکٹر کریم وقت
بیمارے مابین فہم نہیں ہوا تھا اب بیمارے مابین علاقہ
کے فہمزمین و مشران نے بذریعہ علماء و دین مفتی ایدہ اللہ شاہ
و مفتی رضوان صاحب نے بیمارے معاملہ / فہم حل کر دیا
اور بیمارے کمپنٹ پر فہمہ کارواں نہ کی جاوے اور ایسے فہم
بیمارے مابین فہم / حل ہو گیا ہے۔ ہمیں راجی کر دیا اور
ہم نے رسول الیم کو عاق کر دیا۔

محمد شہزاد ایاز رضا خان / سائل اوری
CNIC # 11101-1447870-7

محل دار علی خان (سائل اوری)
CNIC # 11101-1496420-1

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30 MAR 2020

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Lower Courts Barani

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سکتی نہ دیتے ہیں
محمد طاہر اور علی
ہمیں کسی ایسی چیزیں
انڈیشنیشن 30 III بنوں

Handwritten signature and stamp

Annex

1 لکھ (42)

بیان گل دار علی خان ولد محمد انوار خان سکنہ سوری ٹون

حلفاً بیان کیا کہ میرا اور شہزادہ انوار خان و عینہ کا مسماہ دل پرزادہ
 و عینہ کے ساتھ دیوانی مقدمہ زیر سماعت تھا۔ مقدمہ مذکورہ میں
 گل نصیب و عینہ کی بیان کی مداخلت پر ایس جی ٹی / ثالثان
 مقرر ہوئے جس میں اعجاز خان پیادہ بھی ایک ثالث تھا۔
 مذکورہ جی ٹی ممبران نے ^{فرینس} 3 لاکھ روپے لگا دیے اور تقریباً 9 ٹون
 سونا بطور ضمانت لیا۔ اس کے علاوہ جی ٹی ممبران پر 80 ہزار
 روپے خرچ ہوئے تھے۔ ایس جی ٹی ممبران نے ہمارا تنازعہ حل
 نہیں کیا جس وجہ سے ہم نے جی ٹی ممبران کے خلاف ضابطہ
 جیف سٹیس لیسٹاؤڈ لائی کورٹ کو درخواست دائر کی تھی۔ مذکورہ
 درخواست کی نقل آج جس نے دیکھی کی ہے۔ جس پر ہم اس دستخط
 درست طور پر ثبت ہے۔ جو کہ مارک A ہے۔ اب ہمارا
 مقدمہ مقامی علماء نے جس شہرت حضرت عظیم کیا ہے۔ جی ٹی ممبران
 نے عینہ و ٹولہ سونا و ایس کیا ہے۔ جس اعجاز پیادہ کے خلاف
 کارروائی نہیں چاہتا ہوں کیونکہ اس نے اپنی لٹائی کی بات
 سہری صفائی کی ہے۔ اسی طرح میں اس بات ایک درخواست
 ممبران و ایس کرنے کیسٹ کے دائر کیا ہے۔ جو کہ Ex. PW 1 ہے۔

م ج -

میں اعجاز خان کو جی ٹی ممبران سے جملے میں جانتا تھا۔
 میں نے سونا اور 3 لاکھ روپے اعجاز کو ایس دینے سے منع
 جاری ہے۔

ATTESTED

30 MAR 2023

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پورا جملہ جہ کہ حکم ان فرائے تعظیم مقدمہ دئے گئے ہیں۔
 نے دیگر فریقین مقدمہ کی اصلاح پر اعجاز کے خلاف کمیشن
 کی تھی۔ آج میں، PW-1 Ex دئے گئے ہیں۔ جس پر میں اپنا
 دستخط درست طور پر ثبت کی ہے۔ مارک A پر دہرا
 دستخط میں نے خود نہیں لگا سکا بلکہ میرے کھتے صدف اللہ
 نے لگا سکا۔ یہ غلط ہے کہ اعجاز نے ہمارے مقدمہ میں
 شامی کا کردار ادا نہیں کیا ہے۔ ہمارے پاس شامی دو علمائے
 کرام نے گواہی کے مقدمہ تعظیم لکھا ہے۔ جس پر ہم راہی ہیں۔
 یہ درست ہے۔ کہ انہوں میں صبا رواج کسی مقدمہ کا نام لے
 شامی کا حکم کرنے کے لئے صرف جس ادا کی گئی ہے۔ یہ درست ہے
 کہ اعجاز نے ہم سے حج خاص کے نام پر کوئی رقم نہیں لی ہے۔ یہ بھی
 درست ہے کہ اعجاز نے حج خاص کا حکم شامی میں
 یا کسی اور طرح پر نام استعمال نہیں کیا ہے۔ مجھے یہ علم ہے
 کہ اعجاز کے سرادران بہرون ملک میں۔ اور یہ ہے کہ
 ہماری کمیشن مارک A کی بات جملہ کارروائی حضرت اللہ تعالیٰ ہے
 مجھے یہ علم ہے کہ کمیشن میں لگا سکا اور لیا ہے۔

سن کہ درست تسلیم کیا
 مورخ 12.12.19
 سول جج - لاہور

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بیان آزان شہر آماڑ خان ولد بلقیار خان سکنہ ڈکٹر فیصل
ماڑار پور۔

بیان کیا کہ میں نے اور گل وار علی نے ایجاز اور دیگر کٹر علمین
کے خلاف سابقہ محرز صیف جسٹس لٹا اور لائی کورٹ کو درپوش
کی گواہی کے لئے سے مارت A ہے۔ تاہم حاصلہ ہمارا دہائی
مقدمہ مقامی عدالت نے جسٹس لٹا کے پاس ہے۔ میں نے
ص کٹر علمین کو زراعتیات مبلغ ایک لاکھ روپے دے دیے جو
مجموعہ دیکھ لے کر وہیں جو کہ میں جو میں منیر مذکورہ کورٹ
کے مات ایجاز کے خلاف منیر مذکورہ کی نہیں چاہتا
ہوں۔

آج میں نے PW-2 کی گواہی ہے۔ جس پر میرا دستخط الیکٹرونک
میں لگا ہے۔ میں مجھ کو الیکٹرونک میں دستخط کرنا
الٹے نہیں لکھی اور وہیں کہ کرنا ہوں PW-2 کے قلم
مذکورہ دست ہے۔ مجھے علم نہیں کہ ایجاز نے
ڈکٹر ہارڈران کے دن ملک کاروبار کرے ہیں۔ ایجاز نے بارے
میں مجھے کچھ بھی علم نہیں ہے۔

سن کٹر دست لٹا
مورخ :- 12.12.19

مسل
مسل ص - 11 - بنوں

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30 MAR 2020
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بیان آزار حضرت اللہ خان ولد محمد دراز خان مسلم
شہزادہ خان سوری باب الہما صل علی بنوں

حلفاً بیان کیا کہ بیمار دوانی مقدمہ زیر کوپیر تھا جس میں جرم
مقرر ہوا جس میں اعلیٰ رتبی رہا جس کو مجھ سے کہا گیا کہ
عمران صاحب رواج فرمائت 9 جولائی 2018 کو سونا فرانس سے
رکھ لے گئے تھے۔ عمران کی درخواست کے تحت 30 جولائی کو راج
پورے آئے۔ جرم عمران کی ناکافی پریم نے اعلیٰ رتبی اور ملک
خلاف حبیب صیف جسٹس لیبارڈی اورٹ کو درخواست کی
تھی جو کہ ملے سے سے حاکم A ہے۔ جس پر میرا دستخط
درست طور پر ثبت ہے۔ جرم عمران نے 9 جولائی کو سونا
والس لے گئے۔ صل بقایا ان کے اخراجات پر خرچ
ہوئے حاکم ملے آئے۔ میں اعلیٰ رتبی خلاف مندرکاروانی
کا خواہاں نہیں ہوں۔

X X درست ہے۔ کہ اعلیٰ رتبی سے نہیں جانتا تھا۔ جو صل
تیس کہ اعلیٰ رتبی برادران یہ دونوں ملک پورے آئے۔

حاکم A پر کل دار علی نے اپنا دستخط خود کیا ہے۔
میں نے اس سے کہ کل دار علی نے حاکم A پر اپنے
دستخط سے القام کرنے سے بچوٹ بولا ہے۔ ہمارا حاکم
اب صل دو علماء رام نے لفظ لیا ہے۔ جو فرمائت
م نے دیکھا تھا اسی فرمائت کی بنیاد پر دو علماء کرام نے
صل لیا در کیا تھا۔ یہ کہہ کر درست ہے کہ صل لیا
جاری ہے۔

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بوتے کے بعد زراعت فریق کو واپس کی جاتی ہے۔ اسی
 طرح زراعت میں بھی واپس کیا ہے۔ یہ کہنا
 غلط ہے۔ کہ اعجاز نے ثانی کا کردار ادا نہیں کیا ہے۔
 میں مزید اعجاز نے خلاف کسی قسم کی نادرہی کا روٹی میں
 چاہتا ہوں۔ اور انکوٹری داخل دفتر کی جائے۔

من کردہ دست تسلیم لیا
 علیہ

سول جج کلیم آباد، بنوں

12.12.2019

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استفتاء

کیا فرماتے ہیں علماء دین اس مسئلہ سے بارے میں کہ ایک شخص جسے مثل خان
 بھٹیا نے الہی وفات پاگئے اس کے ورثاء میں سے ایک زوجہ بس لڑہ، چار بیٹیاں
 دل فر زادہ، بس لڑہ، مہدی زہا، سلیمی، اور 3 بیٹا زاد بھائی سے ہیں۔
 گل در علی خان، گل تیار، شاہ داران، چونکہ مرحوم کی رہیں کھیتی مسئلہ پانچواں زندہ کھیتی
 اب دریافت طلب ہے کہ مرحوم کا ترکہ شرعی قوانین کے مطابق کس طرح
 تقسیم کیا جائیگا

الجواب

صورت مسئلہ میں مرحوم نے بوقت انتقال اپنی ملکیت میں جو کچھ منقولہ غیر منقولہ مال
 و جائیداد، مکان، سونا، چاندی، غرض کسی بھی قسم کا مجموعہ اس کے سوا جان بھریا ہو
 وہ سب مرحوم کا ترکہ ہے اس میں سب سے پہلے مرحوم کے کفن و دفن کے جائز اخراجات
 لگا کر جائیں گے۔ اس کے بعد اگر مرحوم نے کوئی جائز وصیت کی ہو تو تقیید ترکہ
 میں سے ایک اتالی میں سے اس پر عمل کیا جائیگا اس کے بعد مرحوم کا باقی ترکہ کے
 حصے (72) حصے کیے جائیں گے۔ جن میں سے مرحوم کے بیوہ مستحقات سے لڑہ کو
 9 حصے، مرحوم کے چار بیٹوں میں سے ہر ایک کو بارہ، بارہ (12) حصے جبکہ
 چچا زاد بیٹا کے تینوں بیٹوں میں سے ہر ایک کو پانچ، پانچ (5) حصے دیئے
 جائیں گے جبکہ بازار اور جیسا کہ نقشہ ذیل سے واضح ہو رہا ہے

72 حصے مرحوم مثل خان

زوجہ	بس لڑہ	بس لڑہ	بس لڑہ	بس لڑہ	بس لڑہ	بس لڑہ	بس لڑہ
9	12	12	12	12	5	5	5
دل فر زادہ، بس لڑہ، سرزبانہ، سلیمی	گل در علی	گل تیار، شاہ داران، بازار	چچا کا بیٹا	چچا کا بیٹا	چچا کا بیٹا	چچا کا بیٹا	چچا کا بیٹا

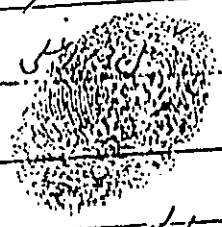
مفتی رضوان اللہ
 کنز معنی جہادیت اللہ شاہ
 رضوان اللہ تعالیٰ
 14-06-17

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بسم الله الرحمن الرحيم
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حرفه 13-6-17

الاسم
المهنة
المكان
اللقب
شهر تریان
فران اول

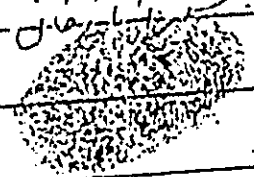


الاسم
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30 MAR 2023

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Annex

"J5"

(49)

5

REPORT
17.12.2019

Accused official present.

The instant inquiry was marked to the undersigned by the Learned Senior Civil Judge Bannu. Statement of allegation already issued to the accused and previous fact finding inquiry was also attached. On receiving the instant inquiry the undersigned issued notices to the accused and to the complainants. Accused Ijaz appeared and submitted written reply. While not agree with written reply the undersigned issued a charge sheet to the accused, the charge is reproduced as under:

I, KALEEM ULLAH, Civil Judge-VI, Bannu, as Inquiry Officer, hereby charge you, Mr. Ijaz Khan, Process Server of the establishment of Senior Civil Judge, Bannu as follows:

That you, while posted as Process Server, committed the following irregularities:

That the as per complaint No. 11706 of Mr. Gul Dar Ali Khan etc communicated to Hon'ble Peshawar High Court, Peshawar vide letter No. 3529/HRC, dated 02.06.2017, you were involved in corruption and corrupt practices having persistent reputation of being corrupt, being involved in dealing with stolen vehicles, forged currency notes and living beyond your ostensible means of income.

- (ii) That you have been guilty of corruption and corrupt practices by getting involved in malpractices leading to gabbing of gratifications, other than legal remuneration, from the litigants by misusing your official position and under the colour of your of office.
- (iii) That your conduct has been pre judicial to the good order and service discipline and your bearing and demeanors are highly unbecoming of a Civil Servant and a Gentleman, thereby earning bad name for the institution.

2. By reason of the above, you appear to be guilty of misconduct under rule 3 of the Khyber Pakhtunkhwa

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uh
Kaleem Ullah
Civil Judge-VI,
Bannu (i)

(50)

Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. Your written defence, if any, should reach the this court within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

4. Intimate whether you desire to be heard in person or through counsel of your choice.

5. A statement of allegations is enclosed.

The complainants' party appeared and recorded their statement as PW-1 to PW-3 and statement of superintendent of the Session court is recorded as PW-4.

PW-1 is Guldar Ali, who stated that a civil case was pending in the civil court Bannu and Ijaz Khan accused Alongwith some other persons were nominated as a Jirga Members. 09 Tola of Gold and three lacs rupees was fixed as Zar-e-Zamanat. He also stated that to have received the whole amount and do not want to proceed against the accused. In his cross examination he denied his signature on the complaint filed before august Peshawar High Court Peshawar which is Mark "A" and in this respect stated that Hafeez Ullah has signed the same for him. Moreover, Guldar Ali and Sher Ayaz Khan also submitted an application for withdrawal of their complaint, which is Ex-PW-1/1.

PW-2 is Sher Ayaz Khan, who also stated that to have received back the Zar e Zamanat from the jarga members including Ijaz Khan accused. He also stated that he do not wish to proceed agaist accused facing inquiry.

PW-3 is Hafeez Ullah, who stated that a civil case was pending in the civil court Bannu and Ijaz Khan accused Alongwith some other persons were nominated as a Jirga

Kaleem Ullah
Civil Judge-VI,
Bannu

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Members. 09 Tola of Gold and three lacs rupees was fixed as Zar-e-Zamanat. He also stated that to have received the whole amount and do not want to proceed against the accused. In his cross examination he denied the signature of PW-1 being made by him.

PW-4 is Shafqat Ullah Superintendent District and Session court Bannu, who produced the special report dated 04.07.2017 by Chairman Corruption Committee District Courts Bannu and is Ex-PW-4/1.

Suggestions:

Statements of PW-1, PW-2 and PW-3 make it crystal clear that the accused facing inquiry has stepped into the matter/issue which was already being subjudice before civil court, Bannu. Taken money to the tune of Rs.300,000/- for himself and his other friends on the pretext of doing Jirga. Accused facing inquiry somehow made the complainant party agree to withdraw their complaint through some outside settlement; still he could not be exonerated on this score alone.

Relation of litigants with courts are based on trust and if some official of court endeavours to throw stains of suspicions upon that trust then it must be countered at the very outset. If it is not countered and stopped then it will have disastrous and murderous effects for the harmony of a society.

Therefore, keeping in view the above discourse coupled with the mitigating situations created by the concessional statements of complainants, a minor penalty may kindly be imposed upon the accused facing inquiry.

The instant inquiry shall be forwarded to the learned SCJ Bannu for onward proceedings.

[Signature]
INQUIRY OFFICER
Civil Judge-VI,
Bannu

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30 MAR 2020

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Courts Bannu

Ames K

(52)

No. 109 / SCJ DATED AT BANNU THE

13 / 01 / 2020

(5)

FINAL SHOW CAUSE NOTICE

I, ABDUL QAYYUM SIDDIQI, Senior Civil Judge, Bannu, Competent authority, within the contemplation of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Ijaz Khari, Process Server as follows:-

- (i). That consequent upon the completion of inquiry No.02 of the year 2019 conducted against you by the Inquiry Officer your involvement in outside settlement of civil cases/ dispute as Jigra members is proved. Your conduct is found unbecoming of an official of the Court having no sense of responsibility.
- (ii). On going through the findings and recommendations of the Inquiry Officer, the material on record and other connected papers including your defence before the Inquiry Officer;

AND WHEREAS, I am satisfied that you have committed the following acts which are amenable under rule 3 (b) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

- a) Guilty of misconduct.

THEREFORE, I, competent authority in view of the said rules above hereby tentatively decide to impose upon you minor penalty of "censure" under rule 4(1)(a)(i) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

IT IS, THEREFORE, required of you to show cause as to why minor penalty within the said rules above may not be imposed upon you and you are given an opportunity of personal hearing if you so desire in which respect you are also directed to intimate this court.

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30 MAR 2020

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YOU, shall submit your reply to the final show cause notice within seven (07) days failing which it shall be presumed that you have no defense to offer and you shall be proceeded against ex-parte.

A copy of the findings of the inquiry officer is enclosed.

Dated: 13.01.2020

ABDUL QAYYUM SIDDIQI
Senior Civil Judge / Competent
Authority

[Handwritten Signature]
14/1/20

[Handwritten Signature]

ATTESTED
30 MAR 2020
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Lower Courts Bannu

عدالت جنا سیکرٹریل جج صاحب / بااحسبہ اعداوی صلح ہوں

Annex L (54)

جواب - مابت فائنل شوکار نوٹس نمبر 109 صفحہ 1/13
2020

(7)

جنا عالی! ذیل عرض ہے

- (1) یہ کہ سائل نے پہلے سے انکوائری کارروائی میں جوابات داخل کئے ہیں، اسی جوابات پر سائل رخصت کرتا ہے۔
 - (2) یہ کہ بدوران انکوائری، انکوائری آفیسر صاحب نے بیانات قلمبند کئے ہیں، انہی بیانات سے ثابت ہوا ہے کہ نہ تو سائل نے کوئی غیر قانونی فعل کیا ہے نہ ہی
 - (3) جرگہ سمبر رہ چکا ہے۔
 - (4) یہ کہ سائل اپنے فرض شناس P.S ہے۔ انہی ڈیوٹی میں کبھی بھی کوئی نہ کی ہے
- ام نہ ہی misconduct کا مرتکب ہوا ہوں۔
- گنہگار استدعا ہے کہ فائنل شوکار نوٹس بلکہ مزید کارروائی داخل دفتر فرمائی جاوے۔

14/3/2020

اعجاز رضا نقی فرد دم عدالت آہو ملہ ہوں

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30 MAR 2020
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Bannu



DISTRICT JUDGE
OFFICE OF

KHYBER PAKHTUNKHWA
LOWER CIVIL JUDGE, BANNU

Annex "M"
(SS)

OFF: 0928-9270195
FAX: 0928-9270195
M sejbannu@gmail.com

(8)

No. 145 /SCJ

Dated At Bannu the 21 /01/2020

OFFICE ORDER:-

Whereas, Mr. Ijaz Khan, Process Server was proceeded against under the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules 2011 for different charges including his outside involvement in civil cases/ dispute as Jirga member.

And whereas, inquiry was conducted into the allegations and the Inquiry Officer, in his report held that, the charges/allegations is proved on record.

And whereas, Final Show Cause Notice was issued to Mr. Ijaz Khan, Process Server of this establishment bearing No. 109, dated 13.01.2020 with proposed penalty and he could not defend the suggested penalty. Therefore, he is held guilty of misconduct and liable to punishment under the rules *ibid*.

Now, therefore, I, Abdul Qayyum Siddiqi, Senior Civil Judge, Bannu, as competent authority impose on the accused / official namely Ijaz Khan, Process Server, the penalty of "censure" as provided under the rule 4(I)(a)(i) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) rules 2011.

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

Endst: No. 146-148 /SCJ Dated At Bannu the 21 /01/2020
Copy forwarded for information to:

1. The Hon'ble District & Sessions Judge, Bannu.
2. The District Accounts Office, Bannu.
3. The official concerned.
4. Office copy.

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PS

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

ATTESTED

30 MAR 2020

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Lower Courts Bannu

Dist. & Sessions Judge
Bannu

Annex "N" (56)

To

The Honorable
District & Sessions Judge Bannu.

Subject: DEPARTMENTAL APPEAL AGAINST IMPUGNED
ORDER DATED 21.01.2020 PASSED BY LEARNED
SENIOR CIVIL JUDGE BANNU, WHEREBY MINOR
PENALTY OF "CENSURE" WAS IMPOSED UPON
THE APPELLANT.

Respectfully Sheweth:-

Brief facts giving rise to this departmental appeal are as under:-

1. That the appellant was re-instant in service vide order dated 17.10.2019 passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar with directions to the respondents to conduct De-novo enquiry in the matter.
2. That the learned Senior Civil Judge Bannu appointed an enquiry officer namely Kaleemullah Civil Judge, VI, Bannu to conduct De-novo enquiry.
3. That charge sheet was issued alongwith a final show-cause notice which was responded by the appellant by denying the allegations as alleged therein.
4. That the enquiry officer recommended for imposition of minor penalty vide order dated: 17.12.2019. (Copy of order is attached).
5. That the learned Senior Civil Judge being competent authority imposed the minor penalty of " CENSURE" upon the appellant vide order dated 21.01.2020.

21.06.2020
Superintendent
District & Session Judge
Bannu

ATTESTED

30 MAR 2020

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Lower Courts Bannu

(57)

6. That inquiry was conducted on the complaint of Guldar Ali regarding involvement of the appellant as arbitrator in a Civil Dispute and also dealing with stolen vehicles and forged currency notes.
7. That it was concluded by the enquiry officer that no allegation of dealing with stolen vehicles established against the appellant or he was found involved in the dealing with forged currency notes.
8. That a complaint No.11706 was filed before the Peshawar High Court Peshawar by one Guldar Ali which was withdrawn by him through an application dated 09.12.2019 wherein as per Para-3 it was mentioned;

"یہ کہ انجاز خان ولد ممتاز خان ہمارا گناہگار نہیں ہے اور نہ ہی اس نے ہمارے مائین ٹالسٹیا ایجنٹ کا کردار ادا کیا ہے۔ ہمارے مائین ٹالسٹیا مفتی ہدایت اللہ شاہ، مفتی رضوان صاحب مقرر ہوئے تھے جنہوں نے ہمارے مائین فیصلہ ٹالسٹیا صادر کی ہے جو کہ تھر طور پر بھی موجود ہے اور مثل پر بھی موجود ہے اور جس پر ہم یقین راضی ہیں۔ قبل ازیں ہم نے مورنہ 14.06.2017 کو ASJ-III میں کمپلیٹ نمبر 11706 واپس کرنے کی استدعا کی تھی۔"

لہذا استدعا ہے کہ ہمارا کمپلیٹ نمبر 11706 بلا مزید کارروائی واپس فرمائی جاوے تاکہ اس سے کسی کو ناجائز نقصان نہ پہنچے۔

مورنہ 09.12.2019

شر آواز خان کمپلیٹ کنندگان

گلداری خان

9. That keeping in view the above referred statement of the complainant, he categorically stated that the appellant has no involvement in the arbitration proceedings or acted as arbitrator, therefore, the findings of the learned Senior Civil

ATTESTED

90 MAR 2020



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Lower Courts Barrow

Superintendent
District & Sessions Judge
Barrow



(58)

DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
OFFICE OF THE SENIOR CIVIL JUDGE, BANNU

	OFF: 0928-662048 FAX: 0928-9270195
	scjbannu@gmail.com

No. _____ / SCJ DATED AT BANNU THE _____ /03/2020

To

Hon'ble the District & Sessions Judge,
Bannu.

Subject:

COMMENTS WITH RESPECT TO DEPARTMENTAL APPEAL
NO. 02 FILED BY IJAZ KHAN, PROCESS SERVER OF THIS
ESTABLISHMENT

Respected Sir,

The subject Departmental Appeal (copy of appeal annexed with notice) perused. My parawise comments are submitted as under:-

1. Para No.1 to 8 of the subject departmental appeal are correct.
2. Para No.9 of the complaint is denied. As per evidence and inquiry report, it was found that outside involvement of appellant in civil cases/ dispute as Jirga member is proved. The inquiry officer has suggested imposition of minor penalty. Therefore, in light of evidence, record and while agreeing with the findings of Inquiry Officer, penalty of censure was imposed upon appellant vide order bearing Endst: No. 146-149, dated 21.01.2020.

Comments are submitted as desired, please.

Sincerely Yours,


 (Abdul Qayyum Siddiqi)
 Senior Civil Judge
 Bannu

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30 MAR 2020

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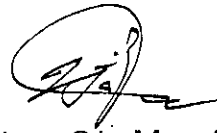
(59)

Judge to the effect that the allegations of involvement of the appellant in a civil dispute as arbitrator has no substance at all, therefore, reached to a conclusion which cannot be justified on the basis of the above candid statement of the complainant Guldar Ali Khan and Sher Ayaz Khan.

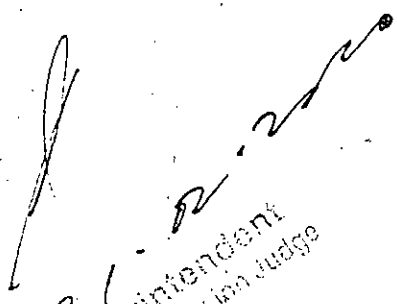
Keeping in view what has been stated above it is therefore, humbly prayed that the impugned order dated 21.01.2020 passed by the learned Senior Civil Judge being competent authority in the case of appellant may kindly be set aside, and I may kindly be exonerated from the alleged allegations being innocent and having no involvement in the matter.

Dated: 06.02.2020

Appellant



Ijaz Khan S/o Mumtaz Khan
Process Sarver in the Court of
Senior Civil Judge Bannu



Superintendent
District & Sessions Judge
Bannu

ATTESTED

30 MAR 2020

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Annex

"O" (60)

THE COURT OF MUNAWAR KHAN
DISTRICT & SESSIONS JUDGE/APPELLATE AUTHORITY,
BANNU

Departmental Appeal No. 02 of 2020

Date of Institution: 21-02-2020

Date of Decision: 17-03-2020

Ijaz Khan, Process Server, Establishment of Senior Civil Judge,
Bannu..... Appellant

Versus

Senior Civil Judge, Bannu / Competent Authority Respondent

AND

Departmental Appeal No. 12 of 2020

Date of Institution: 06-03-2020

Date of Decision: 17-03-2020

Ijaz Khan, Process Server, Establishment of Senior Civil Judge,
Bannu..... Appellant

Versus

Senior Civil Judge, Bannu / Competent Authority Respondent

JUDGMENT

1. This single judgment is meant to dispose of the above cited two departmental appeals, as common question of law & facts is involved therein. Through the former appeal, the appellant has impugned order dated 21.01.2020 passed by the learned Senior Civil Judge, Bannu / Competent Authority, whereby, minor penalty of "Censure" was imposed upon him as contemplated under Rule 4(1)(a)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, while through the latter appeal, he has impugned order

ATTESTED

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

30 MAR 2020

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Lower Courts Bannu

Page 1 of 8

17/3/20
Ijaz Khan

(61)

dated 17.02.2020 of the same authority, whereby, his application dated 23.01.2020 for the grant of back benefits w.e.f 22.07.2017 to 17.10.2017, pursuant to his reinstatement in service, was rejected.

2. Brief facts giving rise to filing these appeals are such that the appellant was serving as Process Server in the establishment of Senior Civil Judge, Bannu, however, on 22.07.2017, he was dismissed from service on the charges of his being involved in corruption & corrupt practices, living beyond his ostensible means of income and misusing his official position as well as having tainted service record, vide order dated 22.07.2017 of the learned Senior Civil Judge, Bannu, against which, the appellant filed Departmental Appeal which could not be decided within the statutory period, hence, he moved the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.1232/2017, which was accepted with directions to conduct a *de novo* inquiry within 90 days, however, the matter of back benefits was subjected to the outcome of *de novo* inquiry vide judgment dated 17.10.2019, thus, the appellant was reinstated into service and after conducting *de novo* inquiry by Mr. Kaleem Ullah, Civil Judge-VI, Bannu, the learned Senior Civil Judge, Bannu / Competent Authority found him guilty of misconduct as defined in the rules *ibid*, hence, after complying with the codal formalities, imposed upon him a minor penalty of "Censure" as envisaged under Rule 4(1)(a)(i) of the *ibid* rules vide the impugned order dated 21.01.2020. Hence, the former appeal.

17/3/20
Khan

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

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3. On 23.01.2020, the appellant submitted an application to the learned Senior Civil Judge, Bannu for grant of back benefits w.e.f 22.07.2017 to 17.10.2017, which application was rejected on the ground that he had not performed duties during the period under dismissal and since he had been penalized, therefore, was not entitled to back benefits vide order dated 17.02.2020. During pendency of the former appeal, the appellant feeling dissatisfied with the order dated 17.02.2020, preferred the latter appeal, thus, both were clubbed by this court vide order dated 06.03.2020, as common question of law & fact was involved therein. Comments of the learned Senior Civil Judge, Bannu / Competent Authority were sought, which were accordingly received.

4. I have heard the appellant personally in both the appeals and gone through the available record.

5. Contention of the appellant Ijaz Khan (Process Server) during personal hearing was that although, a joint complaint No.11706 was filed / submitted against him by Guldar Ali and Sher Ayaz Khan before the Hon'ble Chief Justice, Peshawar High Court, Peshawar, but during *de novo* inquiry proceedings, the same was withdrawn through written application dated 09.12.2019 and in para No.3 of the application, it was specifically and clearly written that he (Ijaz Khan) was not involved in the settlement of dispute between them and the other party and the middlemen in settlement of the dispute were Mufti Hidayat Ullah Shah & Mufti Rizwan. That proceedings against him

17/3/20
Amir

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

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30 MAR 2020

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Lower Courts Bannu

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were initiated on the basis of complaint No.11706 and the complainants have withdrawn the said complaint, therefore, the learned Senior Civil Judge, Bannu / Authority has passed the impugned order dated 21.01.2020 (imposing minor penalty of "Censure") against law, facts and natural justice. He requested for setting aside the impugned order dated 21.01.2020 and for exonerating him from the charges leveled against him.

6. In the latter Departmental Appeal No.12, he requested for setting aside the impugned order dated 17.02.2020 and while accepting his former appeal No.02 of 2020, he be allowed / granted back benefits from 22.07.2017 to 17.10.2017.

7. Perusal of case file revealed that a joint complaint No.11706 was submitted against the appellant (Ijaz Khan Process Server) before the Hon'ble Chief Justice, Peshawar High Court, Peshawar by Gul Dar Ali Khan and Sher Ayaz Khan. The said complaint was sent to this office with covering letter No.3529/HRC dated 02.06.2017 with a direction for necessary action and report within 30 days. My learned predecessor in office marked the same to the then learned ASJ-III, Bannu (Chairman, Anti-Corruption Committee, District Judiciary, Bannu) for inquiry and report. The learned ASJ-III, Bannu (Mr. Muhammad Tahir Aurangzeb) submitted report after inquiry with the following words:

17/3/20
[Signature]

"The Process Server Ijaz Khan has misused his official position and he is involved in corruption and corrupt practices thereby

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

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bringing bad name to the institution. Not only that his service record is tainted, but at the same time there is evidence that he remained involved in handling stolen vehicles, counterfeit currency and is living beyond his ostensible means of income. It is recommended that he be dealt with accordingly”

8. Special Report dated 04.07.2020 ExPW-4/1 was submitted by the then learned ASJ-III, Bannu with a request to initiate disciplinary proceedings against the appellant. Pursuance to the Special Report of the learned ASJ-III, Bannu / Chairman Anti-Corruption Committee, the then learned Senior Civil Judge / Competent Authority (Mr. Sultan Hussain) initiated departmental proceedings against the appellant and on conclusion of the departmental proceedings, he dismissed the appellant from service vide order dated 22.07.2017.

17/3/20
Sultan Hussain

9. The appellant approached this office in appeal, but due to not deciding of the appeal within 90 days (statutory period), the appellant submitted Service Appeal No.1232/2017 before the Provincial Service Tribunal, Khyber Pakhtunkhwa, Peshawar against the order dated 27.07.2017 of the learned Senior Civil Judge, Bannu / Competent Authority.

10. The Hon'ble Provincial Service Tribunal, Peshawar was pleased to accept the appeal of the appellant, setting aside the impugned order dated 22.07.2017 reinstating the appellant into service and directed that *de novo* inquiry be conducted within a period of 90 days.

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

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11. On receipt of the judgment dated 17.10.2019 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar, the learned Senior Civil Judge, Bannu / Competent Authority after fulfilling the required legal formalities, appointed Mr. Kaleem Ullah, Civil Judge-VI, Bannu as Inquiry Officer, who conducted the inquiry against the appellant and submitted his report with the following suggestions:

"Suggestions:

Statements of PW-1, PW-2 and PW-3 make it crystal clear that the accused facing inquiry has stepped into the matter/issue which was already being subjudice before civil court, Bannu. Taken money to the tune of Rs.300,000/- for himself and his other friends on the pretext of doing Jirga. Accused facing inquiry somehow made the complainant party agree to withdraw their complaint through some outside settlement; still he could not be exonerated on this score alone.

Relation of litigants with courts are based on trust and if some official of court endeavours to throw stains of suspicions upon that trust then it must be countered at the very outset. If it is not countered and stopped then it will have disastrous and murderous effects for the harmony of a society.

Therefore, keeping in view the above discourse coupled with the mitigating situations created by the concessional statements of complainants, a minor penalty may kindly be imposed upon the accused facing inquiry.

The instant inquiry shall be forwarded to the learned SCJ Bannu for onward proceedings."

17/3/20
S. Mansoor

12. The learned Senior Civil Judge, Bannu / Authority after receipt of findings of the inquiry officer, issued the appellant final show cause notice which the appellant replied.

13. The learned Senior Civil Judge / Authority vide order dated 21.01.2020 imposed the minor penalty of "Censure" upon the appellant. It is a fact that the complainants Guldar Ali Khan and Sher

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

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Lower Courts Bannu

(66)

Ayaz Khan have submitted a complaint No.11706 before the Hon'ble Chief Justice, Peshawar High Court, Peshawar. Serious allegations of receiving money from the litigants have been leveled against the appellant. According to the contents of the said complaint, the appellant himself came to the complainants introducing himself as court staff and took an amount of Rs.4,00,000/- cash and 09 tolas gold ornaments as security and promised that he will settle the dispute between them and the other party whose case was pending before a civil court. The appellant was an active member of the gang which gang used to obtain huge amounts as security from different people and after success or failure in settling the dispute, the said gang used to misappropriate the amounts.

17/3/20
Bannu

14. During the inquiry proceedings, Guldar Ali Khan and Sher Ayaz Khan although, have withdrawn the complaint, but they have not denied of filing the said complaint. So, mere withdrawal of the complaint before the inquiry officer is meaningless. By name complaint has been filed against the appellant, the wordings of which are shameful for a staff member of this establishment.

15. According to the Special Report of the then learned Additional District & Sessions Judge-III, Bannu, the appellant was involved in corruption and was living beyond his ostensible means. The then learned Additional District & Sessions Judge-III, Bannu was also a Chairman of Anti-Corruption Committee, District Judiciary, Bannu. His Special Report could not be ignored altogether.

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

ATTESTED

30 MAR 2020

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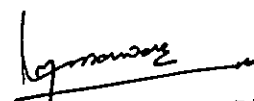
(67)

16. The learned Senior Civil Judge / Authority keeping in mind all the above noted facts & circumstances of the case of the appellant has extended extraordinary leniency in the matter and has imposed only a minor penalty of "Censure" upon the appellant vide the impugned order dated 21.01.2020. The appellant deserves no further leniency. Appeal in hand has no merits.

17. So far as the latter appeal of the appellant is concerned, the appellant submitted an application before the learned Senior Civil Judge / Authority for the grant of back benefits from 22.07.2017 to 17.10.2017. In para No.3 of the application, the appellant has wrongly written that he was exonerated from the charges during inquiry proceedings. The learned Senior Civil Judge / Authority vide a detail and convincing order has refused awarding of back benefits to the appellant holding that the appellant has been penalized, hence, not entitled for back benefits. The learned Senior Civil Judge / Authority has passed the impugned order dated 17.02.2020 on the principle of no work and no gain. So, this appeal is also groundless. Both these appeals are, therefore, dismissed.

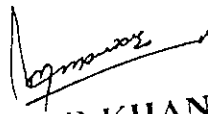
18. Requisitioned record be sent back with a copy of this order to the quarter concerned.

Announced
17.03.2020


MUNAWAR KHAN
District & Sessions Judge,
Bannu / Appellate Authority

(68)

Vide my detailed judgment of today, consisting of 08 pages, separately placed on file, this appeal is dismissed.



MUNAWAR KHAN
District & Sessions Judge
Bannu / Appellate Authority

- 1- Registration No: 1497
- 2- Date of Presentation of Application 30-3-20
- 3- Date of Receipt of the file 30-3-20
- 4- Date of Preparation of copy 30-3-20
- 5- Date of Delivery of copy 30-3-20
- 6- No: of copies forwarded 9
- 7- Ordinary fee 9
- 8- Urgent Fee _____
- 9- Total Fee 9
- 10- Signature of copyist bd

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bd
30 MAR 2020

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Lower Courts Bannu

عدالت صاحب سنیٹر سول جج صاحب بنوں

درخواست برادر دیکھے جانے Back benefits از 22-7-17 تا 17-10-17
بوجوہات ذیل

صاحب عالی! ذیل عرض ہے

1۔ یہ کہ سائل عدالت صاحب نے صف 22-7-17 کو نوٹری سے برخواست کیا تھا۔ اور عدالت سروس ٹریبونل نے صف 17-10-17 کو اپنی نوٹری میں بحالی کے احکامات جاری کیے۔

2۔ یہ کہ ساتھی De-novo انکوائری کے احکامات بھی جاری کیے گئے تھے۔

3۔ یہ کہ انکوائری میں سائل کو الزامات سے تبرہ الذاہم قرار دیا گیا۔

4۔ یہ کہ سائل کو Back benefits دینا استدھوری ہے۔

لہذا استدعا ہے کہ سائل کو Back benefits دینے کے احکامات

صادر فرمائے جاوے۔ تاہم الفاضلہ تعاقب سے پورے پورے

سائل دیکھا اور پتہ 23-07-2020 سے

ATTESTED

30 MAR 2020

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Sir

الحاجزبان دم عدالت سول جج بنوں

ATTESTED

20 FEB 2020

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Report Assistant of Distt. Accounts officer Bannu is required has to submit if applicant is entitled or not for the back benefits.

Distt. Account officer Bannu to be approached for suggestion.

Col 738

1. Name of the Applicant of Application	21-2-2020
2. Date of Receipt of the file	21-2-2020
3. Date of Preparation of report	21-2-2020
4. Date of Delivery of report	21-2-2020
5. Name of Officer / Clerk	01
6. Stationary Fee	
7. Stamp Fee	
8. Misc. Fee	
9. Signature of Officer	

"Amroo" (70)

DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
OFFICE OF THE SENIOR CIVIL JUDGE, BANNU

OFFICE: 0928-662018
FAX: 0928-670195
sejbannu@gmail.com

No. 164 / S.C.J. DATED AT BANNU THE 25 / 01 / 2020

To: The District Accounts Officer,
Bannu.

Subject: BACK BENEFITS

Memo.

Mr. Ijaz Khan, process server of this establishment was removed from services but on acceptance of his appeal by Khyber Pakhtunkhwa Service Tribunal, Peshawar, he was again reinstated into services but his back benefits were subjected to the fat of de-novo inquiry vide judgment dated 17.10.2019 (Copy attached). Now after conducting de-nov inquiry, the applicant has been awarded minor penalty of "censure" on the recommendation of inquiry officer (Copy of order annexed).

Therefore, it is desired to request you to assist the undersigned as to whether the applicant is entitled to the back benefits or not in the circumstances mentioned above.

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

ATTESTED
30 MAR 2020
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OFFICE OF THE
DISTRICT ACCOUNTS OFFICER
BANNU

FAX/PHONE NOs 0928-9270030 & 68

No.DAO/BU/PR-I/Bank / 2019-20/2305

Dated: 03/02/2020

To

The Senior Civil Judge,
Bannu.

SUBJECT: BACK BENEFITS.

Memo;

Please refer to your office letter No.164/SCJ/dated: 25.01.2020 on the subject noted above.

In this connection, it is, submitted that the subject case may be dealt in light of ~~FR 54~~ of FR&SR (Copy enclosed for ready reference). If there is any ambiguity, then the case may be referred to law department Government of Khyber Pakhtunkhwa, Peshawar for further guidance, please.

District Accounts Officer
Bannu

ATTESTED

30 MAR 2020

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IN THE COURT OF ABDUL QAYYUM SIDDIQI
SENIOR CIVIL JUDGE, BANNU

ORDER#1
23.01.2020

Annex "S" (72)

Petitioner namely Mr. Ijaz Khan, process server submitted an application for back benefits. It be registered.

Opinion be sought from District Accounts Officer, Bannu.
File be put up after receipt of opinion.

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

ORDER#2
03.02.2020

Opinion from District Accounts Officer, Bannu vide letter No.DAO/BU/PR-I/Bank/2019-20/2305,dated 03.02.2020 received.

File be put up for perusal on 17-02-2020.

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

ORDER#3
17.02.2020

Petitioner namely Mr. Ijaz Khan, process server in person present.

Briefly stated that the petitioner namely Mr. Ijaz Khan, process server was dismissed from his services vide order dated 22.07.2017, for which the petitioner filed an appeal before Khyber Pakhtunkhwa Service Tribunal Peshawar for reinstatement. On acceptance of appeal No. 1232/2017 dated 17.10.2019, the petitioner was reinstated into services.

ATTESTED
30 MAR 2020
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Lower Courts Bannu

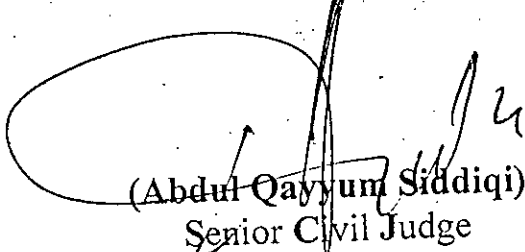
73

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The issue of back benefits was subjected to outcome of the de-novo enquiry. After conclusion of de-novo inquiry, minor penalty of Censure was imposed upon accused/ official as he was found guilty of part allegation vide order No. 145 dated 21.01.2020. Admittedly, the accused/ official has not performed his duties during the period under dismissal. The accused/ official was not held entitled to any back benefits at the time of final order of imposing penalty of censure. Since he has been penalized and was not entitled to back benefits.

Therefore, the petition being without merit is rejected. File be consigned.

Announced
17.02.2020


(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

ATTESTED
30 MAR 2020
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Lower Courts Bannu

Annex "T" (74)

To

The Honorable
District & Sessions Judge Bannu.

SUBJECT: DEPARTMENTAL APPEAL AGAINST IMPUGNED
ORDER DATED 17.02.2020 WHEREBY
APPLICATION DATED 23.01.2020 FOR GRANT OF
BACK BENEFIT WAS DISMISSED.

Respectfully Sheweth:-

Brief facts giving rise to this departmental appeal are as under:-

1. That the appellant was re-instated in service vide order dated 17.10.2019 passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar with directions to the respondents to conduct De-novo enquiry in the matter.
2. That the learned Senior Civil Judge Bannu appointed an enquiry officer namely Kaleemullah Civil Judge, VI, Bannu to conduct De-novo enquiry.
3. That charge sheet was issued alongwith a final show-cause notice which was responded by the appellant by denying the allegations as alleged therein.
4. That the enquiry officer recommended for imposition of minor penalty vide order dated: 17.12.2019. (Copy of order is attached).
5. That the learned Senior Civil Judge being competent authority imposed the minor penalty of " CENSURE" upon the appellant vide order dated 21.01.2020.

26-3-2020
Superintendent
District & Sessions Judge
Bannu

ATTESTED

30 MAR 2020

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Lower Courts Bannu

6. That inquiry was conducted on the complaint of Guldar Ali regarding involvement of the appellant as arbitrator in a Civil Dispute and also dealing with stolen vehicles and forged currency notes.
7. That it was concluded by the enquiry officer that neither allegation of dealing with stolen vehicles established against the appellant nor he was found involved in dealing with forged currency notes.
8. That a complaint No.11706 was filed before the Peshawar High Court Peshawar by one Guldar Ali which was withdrawn by him through an application dated 09.12.2019 wherein as per Para-3 it was mentioned;

"یہ کہ اعجاز خان ولد ممتاز خان ہمارا گناہگار نہیں ہے اور نہ ہی اس نے ہمارے مائین ٹالٹ یا ایجنٹ کا کردار ادا کیا ہے۔ ہمارے مائین ٹالٹان مفتی ہدایت اللہ شاہ، مفتی رضوان صاحب مقرر ہوئے تھے۔ جنہوں نے ہمارے مائین فیصلہ ثالثی صادر کی ہے جو کہ تحریر طور پر بھی موجود ہے۔ اور مثل پر بھی موجود ہے۔ اور جس پر ہم فریقین راضی ہیں۔ قبل ازیں ہم نے مورثہ 14.06.2017 کو ASJ-III میں کمپلیٹ نمبر 11706 واپس کرنے کی استدعا کی تھی۔

لہذا استدعا ہے کہ ہمارا کمپلیٹ نمبر 11706 بلا مزید کارروائی واپس فرمائیں جاوے۔ تاکہ اس سے کسی کو ناجائز نقصان نہ پہنچے۔

مورثہ 09.12.2019

شیر آماز خان کمیٹی کنڈگان

گلداری خان

ATTESTED

30 MAR 2020

9. That keeping in view the above referred statement of the complainant, he categorically stated that the appellant has no involvement in the arbitration proceedings or acted as arbitrator, therefore, the findings of the learned Senior Civil

Cooping Agency
of the Court Bahawalpur

(76)

Judge to the effect that the allegations of involvement of the appellant in a civil dispute as arbitrator has no substance at all, therefore, reached to a conclusion which cannot be justified on the basis of the above candid statement of the complainant Guldar Ali Khan and Sher Ayaz Khan.

10. That the competent authority also sought opinion of the District Account Officer Bannu vide letter dated: 25.01.2020, that whether back benefit can be granted to the appellant.
11. That the District Account Officer Bannu vide letter dated 03.02.2020 addressed to the Sr. Civil Judge Bannu wherein he referred to FR-54 which may deal with the issue of grant of back benefit with further remarks that if there is any ambiguity, then the case may be referred to law department Government of Khyber Pakhtunkhwa for further guidance.

It is pertinent to mention that no guidance was obtained by the competent authority from law department to decide the issue of back benefit or any law was specifically quoted which restrains the grant of back benefit to the appellant.

12. That it is pertinent to refer to FR-54 for ready reference;

[F.R 54 Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty-]

ATTESTED

30 MAR 2020

Copying Agency
Lower Court

(77)

(a) If he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal;
or

(b) -----

It is pertinent to mention that the above rule will only be applicable when an FIR is registered against a Civil servant from whom he is acquitted by the court of competent jurisdiction.

Since no FIR has been registered against the appellant only departmental proceedings were conducted on the basis of unfounded allegations and it was categorically held by the inquiry officer that no charges of dealing with stolen vehicle or counterfeit currency established against him, therefore denial of grant of back benefits having no substance and force in the eyes of law.

Even otherwise, competent authority has imposed the penalty of CENSURE upon the appellant against which a separate departmental appeal has been moved before your Honour, therefore, the appellant cannot be penalized or vexed twice for the same cause in terms of the mandate of Article-13 of Constitution of Pakistan, hence the impugned order dated 17.02.2020 restraining back benefits to the appellant is void ab initio liable to be set aside on this ground alone.

Keeping in view what has been stated above it is therefore, humbly prayed that the impugned order dated 17.02.2020 passed by the learned Senior Civil Judge being

ATTESTED

30 MAR 2023

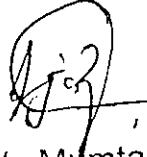
Copying Agency
Lower Courts, Bahawalpur

(78)

competent authority in the case of appellant may kindly be set aside, and consequently grant back benefits with effect from 22.07.2017 to 17.10.2019 as the appellant during the period when he was removed from service did not gain financially elsewhere.

Dated: 26.02.2020

Appellant



Ijaz Khan S/o Mumtaz Khan
Process Sarver in the Court of
Senior Civil Judge Bannu

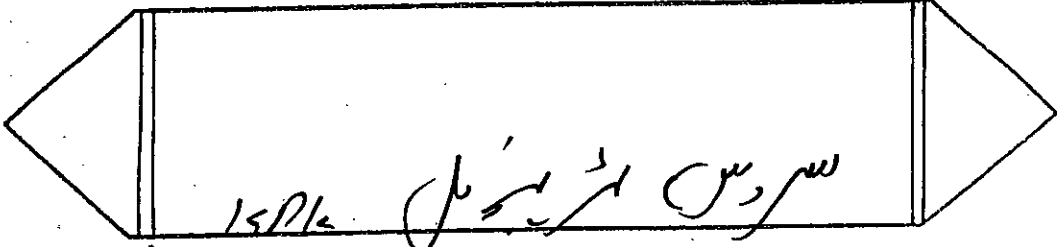
26/3/2020

ATTESTED

30 MAR 2020

Copying Agency
Lower Courts Bannu

بعدالت



2 مخائب
اجازت بنام یسوں جمع

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام PH کیلئے عناوین اللہ خان رزوی سے مان کر کے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیدار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائنہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

ATTESTED
BY

2020
Inayatullah
Lehan
A.P.M.
کے لئے منظور ہے۔

المترجم

بمقام سناد

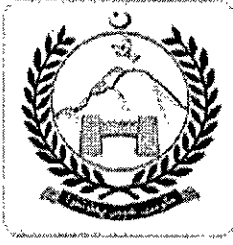
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**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 2372 /ST

Dated: 01/12/2021

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

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

To

The Senior Civil Judge,
Government of Khyber Pakhtunkhwa,
Bannu.

Subject: JUDGMENT IN APPEAL NO. 3728/2020, MR. IJAZ KHAN.

I am directed to forward herewith a certified copy of Judgement dated 07.09.2021 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

SERVICE APPEAL NO. 3728 / 2020

Ijaz Khan... Vs... District & Sessions Judge, Bannu & others

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Sr. #	Description of Documents	Annexure	Pages
1	Reply on behalf of Respondents No.1 & 2		1-3
2	Affidavit		4
3	Copy of order dated 04.11.2003	"A"	5-6
4	Copy of first page of service book of the appellant	"B"	7
5	Copy of Service Appeal No. 1232/2013 alongwith judgment dated 17.10.2019	"C", "D"	8-12
6	Copy of notice dated 09.11.2019	"E"	13
7	Copy of Complaint No. 11706, Fact Finding Inquiry Report and Special Report dated 04.07.2017	"F, G, H"	14-17
8	Copy of charge sheet	"I"	18
9	Copy of reply	"J"	19-22
10	Copy of inquiry report dated 17.12.2019	"K"	23-25
11	Copy of show cause notice dated 13.01.2020	"L"	26-27
12	Copy of order dated 21.01.2020	"M"	28
13	Copy of Departmental Appeal dated 06.02.2020 and final order dated 17.03.2020	"N, O"	29-39
14	Copy of application dated 23.01.2020, letter of Respondent No.2 to District Accounts Officer, Bannu dated 25.01.2020 and reply by the District Accounts Officer, Bannu dated 03.02.2020 alongwith combined Set of F.R. & S.R. (Volume I & II) Page No.146	"P, Q, R, S"	40-43A
15	Copy of order dated 17.02.2020	"T"	44-45
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SUPERINTENDENT
District & Sessions Judge
Bannu

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.3728 of 2020

Ijaz Khan S/o Mumtaz Khan,
Process Server, Senior Civil Judge, Bannu
R/o Bangi Khel, Sorani, P.O Nizam Bazaar,
Tehsil and District, Bannu

.....Appellant

VERSUS

1. District & Sessions Judge, Bannu.
2. Senior Civil Judge(Admn), Bannu.

.....Respondents

Reply on behalf of Respondents No.1 & 2.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS

1. That the appeal is not maintainable in its present form.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has got no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.

Facts:-

1. Para No.1 pertains to record(Copy of order dated 04.11.2003 is annexed as Annex: "A").
2. Para No.2 pertains to record(Copy of first page of service book is annexed as Annex: "B").
3. Para No.3 pertains to record(Copy of Service Appeal No. 1232/2013 alongwith judgment dated 17.10.2019 are annexed as Annex: "C" and "D" respectively).
4. Para No.4 pertains to record(Copy of notice dated 09.11.2019 is annexed as Annex: "E").
5. Para No.5 of the appeal is incorrect and the said plea was non-convincing for the reason that in the proceedings under E & D Rules, 2011, charges stood proved against him(Copy of Complaint No. 11706, Fact Finding Inquiry Report and Special Report dated 04.07.2017 are annexed as Annex: "F", "G" & "H" respectively).
6. Para No.6 pertains to record(Copy of charge sheet is annexed as Annex: "I").
7. Para No.7 is incorrect, because the said reply did not contain convincing reasons. (Copy of charge sheet is already annexed in Para-6 as Annex "I", while the reply is annexed as Annex "J")

8. Para No. 8 of the appeal is denied. Most respectfully, it is replied that in view of evidence and inquiry report the involvement of appellant in resolution of civil dispute pending adjudication before competent court was proved, which act of the appellant was found unbecoming of a civil servant and thus was found guilty of misconduct under rule 3(a) of Khyber Pakhtunkhwa Govt: Servant (Efficiency and Discipline) Rule, 2011(Copy of inquiry report dated 17.12.2019 is annexed as Annexure "K").
9. Para No.9 pertains to record(Copy of inquiry report dated 17.12.2019 is already attached in Para No.8).
10. Para No.10 pertains to record(Copy of show cause notice dated 13.01.2020 is annexed as Annex: "L").
11. Para No. 11 of the appeal is denied on the grounds already mentioned in para No.08.
12. Para No.12 pertains to record(Copy of order dated 21.01.2020 is annexed as Annex: "M").
13. Para No.13 pertains to record (Copy of Departmental Appeal dated 06.02.2020 and final order dated 17.03.2020 are annexed as Annex: "N" and "O" respectively).
14. Para No. 14 pertains to record. The opinion of District Accounts Officer, Bannu was sought who referred to FR 54 of FR & SR, Vol-I & II, Fundamental Rules. As per referred rules in case of acquittal/ exoneration of an official from the charges, he is entitled to full pay and allowances as contemplated under sub clause (a) of the ibid rule. Whereas under clause (b) of the ibid rule if otherwise, such portion of pay and allowances as the revising or appellant authority may prescribe. Clause (b) is further explained that the period under dismissal or removal will not be treated as period spent on duty unless the revising appellate authority so directs. In this case the period under dismissal of the appellant was not treated as period spent on duty and thus he was not held entitled to back benefits by my learned Predecessor in office under section 54(b) of the FR & SR Rules Vol-I(Copy of application dated 23.01.2020, letter of Respondent No.2 to District Accounts Officer, Bannu dated 25.01.2020 and reply by the District Accounts Officer, Bannu dated 03.02.2020 alongwith combined Set of F.R. & S.R. (Volume I & II) Page No.146 are annexed as Annex: "P" "Q" "R" & "S" respectively).
15. Para No.15 pertains to record (Copy of order dated 17.02.2020 is annexed as Annex: "T").
16. Para No.16 pertains to record (Copy of departmental appeal dated 26.02.2020 is annexed as Annex: "U" and final order dated 17.03.2020 is already attached in Para No.13).
17. Para No. 17 pertains to record of this Hon'ble Service Tribunal Court.

GROUNDS:-

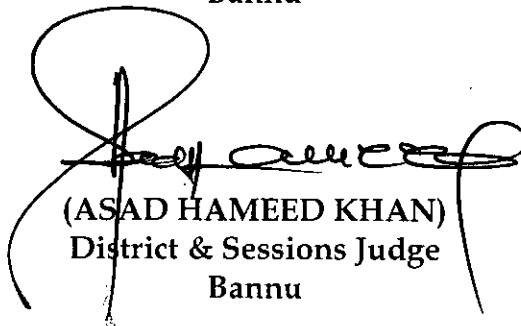
- a. Para No. a is incorrect. The order of the authority is legal and lawful.
- b. Para No. b is also incorrect. The involvement of appellant floats on the surface of record. Appellant being employee of District Judiciary should have refrained himself from any act, which may give smell of bad practices because involvement in such act goes to tarnish the image and impartiality of District Judiciary as a whole as well. The appellant got involved in a dispute which was subjudice before competent court of law and made the judicial process doubtful and unfair in the eye of public.
- c. Para No. c is also incorrect. There is no ill-will against the appellant. He got involved in practices which made him liable for disciplinary action under the law.
- d. Para No. d is also incorrect. Accused was penalized through fair and transparent manner. On the one hand appellant admits that he was penalized with penalty of censure but on the other hand he is claiming back benefits which makes his conduct doubtful. Penalty may be minor or major but the main thing is conviction which the appellant admitted.
- e. Para No. e is incorrect. The appellant was given full opportunity to defend himself but charges stood proved against him. The appellant being local tried to influence the complainant by getting favourable statement from him but the entire proceeding disclosed his involvement in corrupt practices.
- f. Para No. f is incorrect. Impugned orders contained detailed reasoning.
- g. Para No.g is also incorrect, as the appellant was having no ground to agitate, for he can't travel beyond his pleading.

PRAYES:-

It is therefore most humbly prayed that in light of above facts, submission the appeal of the appellant being devoid of merits, legal footing may be dismissed.



(MUHAMMAD JAMIL KHAN)
Senior Civil Judge(Admn)
Bannu



(ASAD HAMEED KHAN)
District & Sessions Judge
Bannu

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.3728 of 2020

Ijaz Khan S/o Mumtaz Khan,
Process Server, Senior Civil Judge, Bannu
R/o Bangi Khel, Sorani, P.O., Nizam Bazaar,
Tehsil and District, Bannu

.....Appellant

VERSUS

1. District & Sessions Judge, Bannu.
2. Senior Civil Judge(Admn), Bannu.

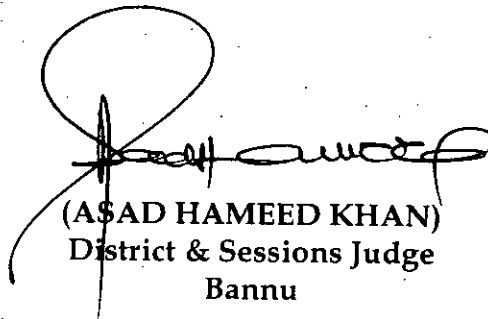
.....Respondents

AFFIDAVIT

We respondents No.1 & 2 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed / kept secret from this Honorable Tribunal.



(MUHAMMAD JAMIL KHAN)
Senior Civil Judge(Admn)
Bannu



(ASAD HAMEED KHAN)
District & Sessions Judge
Bannu

(5)

OFFICE OF THE SENIOR CIVIL JUDGE, BANNU.

No. 922

Dated 14/11/2003

ORDER.

In pursuance of this office order No.833 dated 4.11.2003, the following postings and transfers are hereby made in the interest of public service, till further order:-

<u>S.rNo.</u>	<u>Name & designation.</u>	<u>From</u>	<u>To</u>	<u>Remarks.</u>
1-	Mr.Gul Rehman, Process Server,B-1.	On Ist appointment, on created post.	DSJ, Banhu.	Service entrusted at the disposal of Hon'ble Distt. and Sessions Judge, Bannu.
2-	Mr. Sarhad Ali, Process Server,B-1.	-do-	-do-	-do-
3-	Mr. Mohammad Zahoor, Process Server,B-1.	-do-	-do-	-do-
4-	Mr. Ijaz Khan, Process Server,B-1.	-do-	-do-	-do-
5-	Mr.Afsar Khan, Process Server,B-1.	On Ist appoint- ment.	SCJ, Bannu.	Posted as Process Server against create post.
6-	Mr.Rashad Khan, Process Server,B-1	-do-	-do-	-do-
7-	Mr.Mumtaz Khan, Process Server,B-1.	-do-	-do-	-do-
8-	Mr.Ameenullah, Process Server,B-1.	-do-	-do-	-do-
9-	Mr.Wahid Murad, Process Server,B-1.	-do-	-do-	-do-
10-	Mr.Safiullah Khan, Process Server,B-1.	-do-	-do-	-do-
11-	Mr.Khalil Nawaz, Process Server,B-1.	-do-	-do-	Posted as Process Server against vacan post. -do-
12-	Mr.Raifullah Khan, Process Server,B-1	-do-	-do-	-do-
13-	Mr.Mohammad Afzal, Process Server,B-1.	-do-	-do-	-do-
14-	Mr.Adil Khan, Process Server,B-1.	-do-	-do-	-do-

Attested
[Signature]
Superintendent
District & Session Judge
Bannu

To be Contd:Next P-2.

Sr.No.	Name & Designation.	From	To	Remarks.
15-	Mr. Jalal Mohammad Ibrahim, B-1.	On first appointment.	CJ-IV, Bannu.	Posted as Chowkidar against vacant post.
16-	Syed Asghar Ali Shah, Chowkidar.	-do-	CJ-II, Bannu.	Posted as chowkidar against created post.
17-	Mr. Irshad Ali Khan.	-do-	CJ-I, Bannu.	Posted as Naib Qasid, against vacant post.
18-	Mr. Mohammad Sharif Khan, Naib Qasid.	-do-	CJ-VI, Bannu.	Posted as Naib Qasid against vacant post.
19-	Mr. Munir Jaesoph, Sweeper.	-do-	CJ-III, Bannu.	Posted as Sweeper against created post.

Note:- The official at serial No. 19 will perform the duties of the court of Civil Judge-II, Bannu in addition to his own duty.

(Mohammad Zeb Khan)
Senior Civil Judge, Bannu.

Endst: No. 923-48 Dated Bannu the 14/11/2003

Copies forwarded to:-

- 1- The Hon'ble District & Sessions Judge, Bannu for favour of information please. The attested copies of medical certificate and charge reports of the officials at serial No. 1 to 4 are also attached.
- 1-A The Civil Judge/JM-I, II, III, IV & VI, Bannu.
- 2- The D.A.O., Bannu.
- 3- The officials concerned for information and necessary action.

(Mohammad Zeb Khan)
Senior Civil Judge, Bannu.

Attested
Superintendent
District & Sessions Judge
Bannu
14/11/2003

- ①
- 1- Name (نام) Ijaz Khan
 - 2- Nationality and Religion Pakistani - Islam
(قومیت اور مذہب)
 - 3- Residence Bhangi Kheri Surani, Banna
(مستقل رہائش)
 - 4- Father's name and residence Mumtaz Khan
(والد کا نام اور پتہ)
 - 5- Date of birth by Christian era as nearly as can be ascertained. 16-12-72
(تاریخ پیدائش مطابق سن عیسوی)
 - 6- Exact height by measurement 5' 5"
 - 7- Personal mark of identification Two Brown Moles
on forehead

Left hand/right hand thumb and finger-impressions of (Non-gazetted officer)
(مرد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Index Finger
(انگلی)

Ring Finger
(انگلی کے ساتھ کی انگلی)

Middle Finger
(انگلی کے ساتھ)

Fore Finger
(انگلی کے ساتھ)

Thumb
(انگوٹھا)

Signature of Govt. Servent
(سرکاری ملازم کے دستخط)

Attested
16/12/21
Supervising
District & Session Judge
Banna

Signature and designation of the Head of the Office or other Attesting officer
(تصدیق کنندہ افسر کے دستخط اور مہر)

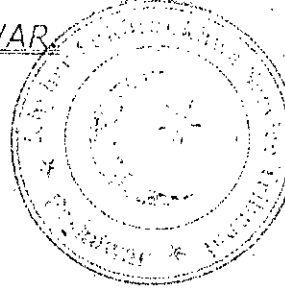
Attested
District Civil Judge
Banna

Note: The entries in this page should be renewed or re-attested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.

نوٹ: اس صفحہ پر درج کیے گئے تمام تفصیلات ہر پانچ سالوں میں تجدید یا دوبارہ تصدیق کی جانی چاہئیں۔ انگلیوں کے نشانات ہر پانچ سالوں کے بعد لے کر لینے کی ضرورت نہیں ہے۔

(8) 35

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR



Service Appeal No. 1232 /2013

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1270

Dated 07-11-2017

Ijaz Khan son of Mumtaz Khan

Ex-Process Server

Senior Civil Judge, Bannu

R/O Bangi Khel, Sorani, P.O. Nizam Bazar,

Tehsil and District Bannu..... Appellant

Versus

- 1) District and Sessions Judge, Bannu.
- 2) Senior Civil Judge, Bannu..... Respondents

Appeal u/s 4 of the N.W.F.P Service Tribunal Act, 1974 against the impugned order dated 22.07.2017 whereby the learned Senior Civil Judge, Sultan Hussain, being the competent authority imposed the major penalty of dismissal from service under Rule 4(b) Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011, on charges of corruption and corrupt practices against which departmental appeal dated 27.07.2017 was filed before the Appellate Authority, which has not been responded despite lapse of statutory period of 90 days, hence presents this appeal within 30 days after expiry of 90 days period which is well within time.

Filed to-day
Registrar
2/11/17

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

36

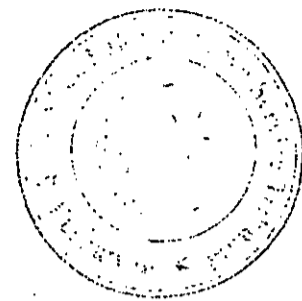
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1232/2017

Date of Institution ... 07.11.2017

Date of Decision ... 17.10.2019



Ijaz Khan S/O Mumtaz Khan,
Ex-Process Server, Senior Civil Judge, Bannu,
R/O Bangi Khel, Sorani, P.O. Nizam Bazar, Tehsil and District Bannu. (Appellant)

VERSUS

District and Sessions Judge, Bannu and one other.

(Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

For appellant.

MR. USMAN GHANI,
District Attorney

For respondents.

MR. AHMAD HASSAN
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the

parties heard and record perused.

ARGUMENTS.

02. Learned counsel for the appellant argued that he was appointed as Process Sarver (BPS-3) on 04.11.2003 and has more than fourteen years service at his credit. Through a memo of allegations dated 12.07.2017 some unfounded and frivolous allegations were leveled against him and thereafter, show cause notice dated 12.07.2017 was served on the appellant to which he replied accordingly. That major penalty of dismissal from service was imposed on him vide impugned order dated 22.07.2017. He filed departmental appeal on 27.07.2017. which remained un-answered, hence, the present service appeal. Under the rules in c

ATTEST

Signature
Khyber Pakhtunkhwa Service Tribunal
Peshawar
04.
from
order

Signature
Khyber Pakhtunkhwa Service Tribunal
Peshawar

OFFICE OF THE SENIOR CIVIL JUDGE, BANNU

13

OFF: 0928-9270195 FAX: 0928-9270195
scjbannu@gmail.com

No. 1036 / SCJ DATED AT BANNU THE 09 /11/2019

To,

Mr. Muhammad Ijaz,
Process Server.

Subject: NOTICE

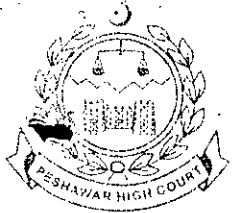
Whereas as per complaint No. 11706 communicated vide Peshawar High Court, Peshawar letter No. 3529/HRC, dated 02.06.2017, inquiry was initiated on the direction of Hon'ble District & Sessions Judge, Bannu. In this regard Special Report of learned ASJ-III/Chairman Anti-Corruption Committee was sent to the learned Senior Civil Judge, Bannu. After inquiry proceedings, Show Cause notice and memo of allegations were issued to you vide this office order No. 977 & 978, dated 12.07.2017 respectively, and you were directed to submit reply, for which your reply received on 17.07.2017. The Inquiry was dispensed with and Final Show Cause Notice was issued to you. The allegations/charges leveled against you were proved and major penalty of dismissal of service was imposed upon you vide this office order bearing Endst: No. 996-1000/SCJ, dated 22.07.2017. You filed a departmental appeal before Hon'ble District & Sessions Judge, Bannu on 22.07.2017, in which the proceedings were not completed within stipulated period and remained un-answered. You filed an appeal for reinstatement before Khyber Pakhtunkhwa Service Tribunal Peshawar vide Service Appeal No. 1232/2017, dated 07.11.2017, and your appeal has been accepted on 17.10.2019. After acceptance of appeal by Khyber Pakhtunkhwa Service Tribunal Peshawar dated 17.10.2019, your services are reinstated with the direction to conduct de-novo inquiry strictly in accordance with law and rules.

In view of complaint No.11706, your explanation has already been called and Show Cause notice dated 12.07.2017 was issued. Your reply to the show cause notice is available on the file. Therefore, you are served with Show Cause Notice already communicated to you to explain whether you rely on the reply already submitted, or would like to submit fresh reply. Your written reply should reach to this office within 3 days positively.

11/11/19

Attornd
District & Sessions Judge
Bannu
16/11/21

Senior Civil Judge
Bannu



The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 9210149-58
Off: 9210135
Fax: 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phcpsht@gmail.com

No. 3529 /HRC

Dated Peshawar, the 2-6-17

From:

The Director I,
Human Rights' Cell,
Peshawar High Court,
Peshawar.

To

The District & Sessions Judge,
Bannu.

Subject:

COMPLAINT (# 11706)

Dear Sir,

I am directed to forward herewith a copy of the subject complaint, for necessary action and report in 30 days, to be placed before Hon'ble the Chief Justice, please.


Director I,
Human Rights Cell

Endst. No. _____ /HRC

Dated Peshawar, the _____

Copy forwarded for information to:

Mr. Guldar Ali Khan and others S/O Khalil Khan R/O Habak Shirza Khan P.O Sikander Khel Bala Surani Bannu.

Director I,
Human Rights Cell

*Learned AG-III
Immediate and Report within
Three days*

Attorney
16/12/17
Superintendent
District & Session Judge
Bannu
8/6/17

15

REPORT OF THE FACT FINDING INQUIRY

Peshawar High Court Communication No.3529/HRC, dated 02-06-2017
Complaint No. 11706

Mr. Guldar Ali Khan, Sher Ayaz Khan and Hafizullah Khan submitted a complaint to the august Peshawar High Court for redressal of their grievance. The complaint was referred to the learned District & Sessions Judge Bannu for report, which was marked to the undersigned for fact finding inquiry.

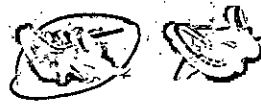
In the first instance, complainants were summoned through provided telephone number. One Hafizullah appeared before the undersigned and owned the contents of complaint made to the august Peshawar High Court. There are specific allegations of corrupt practices against Ejaz Khan Process Server of the establishment of learned Senior Civil Judge, Bannu. It was alleged that the official, in connivance with some official of the police and some other local middle men, is involved in grabbing money from the litigant public on the pretext of getting them favours in the judicial proceedings. It was also alleged that the above named Process Server Ejaz Khan is misusing his official position and is making the litigant public believe that he matters a lot in the administration of Justice System and that in this way, he grabs money initially in the form of "Guarantee for obeying Jirga verdicts" and subsequently refuses to pay back the money even after Jirga proceedings are concluded.

The allegations against official Ejaz Khan Process Server and other private persons were inquired in depth and the relevant

M.L.

16/2/17
Superintendent
District & Session Judge
Bannu

16




16

characters were summoned and examined in the court. Similarly, the service record of the above mentioned Process Server was also scrutinized. A special report in this context was also obtained from the learned Senior Civil Judge, Bannu. My findings are as under:--

1. The Process Server Ejaz Khan has misused his official position and he is involved in corruption and corrupt practices thereby bringing bad name to the institution. Not only that his service record is tainted but at the same time there is evidence that he remained involved in handling stolen vehicles, counterfeit currency and is living beyond his ostensible means of income. It is recommended that he be dealt with accordingly.
2. So far as the allegations against the SHO Riaz Khan PS Basia Khel of District Bannu and private persons Naqeebullah Shah (school teacher), Gul Naqeeb Khan and Noor Sardar Khan (school teacher) are concerned, they remained involved in cheating and grabbing money from public through deceitful means. It is, therefore, recommended that if approved, the petition be converted into petition U/Sec: 22-A of the CrPC and its contents may to be looked into judicially by invoking jurisdiction as *Ex Official of Justice of Peace*.

Attested
16/2/21
Superintendent
District & Session Judge
Bannu

Report is submitted as desired.


(Muhammad Tahir Aurangzeb)
Additional Sessions Judge,
Bannu

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**OFFICE OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE-III,
BANNU**

No. 380

Dated 04/07/2017

SPECIAL REPORT

While conducting fact finding inquiry on the directions of your good-self pursuant to Peshawar High Court communication No. 3529/HRC dated 02.06.2017 in complaint No. 11706, it came to the surface that Mr. Ijaz Khan, Process Server of the establishment of Senior Civil judge, Bannu is involved in corruption and corrupt practices. During the fact finding inquiry, his service record was also obtained from the Senior Civil Judge, Bannu, which reflects that the official has been involved in dealing with stolen vehicles, forged currency notes and has a persistent reputation of being corrupt on account of living beyond his ostensible means of income.

2. As a Chairman of the Anti-Corruption Committee for the para-legal staff, I inquired into the allegations against the official, who was already spotted during the process of integrity profiling. The Anti-Corruption Committee is satisfied that the conduct of the official is not only unbecoming of a civil servant, but at the same time is detrimental to the good order and service discipline. The conduct of the official is not only earning bad name for the institution, but at the same time, he is involved in robbing the vulnerable segments of the society on one pretext or the other, misusing his official position and colour of his office.

3. This Special Report is, therefore, being sent to your honour for initiation of disciplinary proceedings against the official. Report of the fact finding inquiry alongwith entire file has already been submitted to your office.

Attested
[Signature]
Superior District & Sessions Judge
Bannu

[Signature]
(Muhammad Tahir Aurangzeb)
Additional District & Sessions Judge-III,
Bannu/Chairman Anti-Corruption Committee

To the learned District & Sessions Judge,
Bannu

cc
9/7/17

Handed over
[Signature]
Additional District & Sessions Judge
Bannu
9/7/17

NO. _____ /CJ-VI DATED AT BANNU THE _____ /11/2019

To

Mr. Ijaz Khan,
Process Server, SCJ, Bannu.

Subject: **CHARGE SHEET**

1. **KALEEM ULLAH**, Civil Judge-VI, Bannu, as Inquiry Officer, hereby charge you, Mr. Ijaz Khan, Process Server of the establishment of Senior Civil Judge, Bannu as follows:

That you, while posted as Process Server, committed the following irregularities:


- (i) That the as per complaint No. 11706 of Mr. Gul Dar Ali Khan etc communicated to Hon'ble Peshawar High Court, Peshawar vide letter No. 3529/HRC, dated 02.06.2017, you were involved in corruption and corrupt practices having persistent reputation of being corrupt, being involved in dealing with stolen vehicles, forged currency notes and living beyond your ostensible means of income.
- (ii) That you have been guilty of corruption and corrupt practices by getting involved in malpractices leading to gabbing of gratifications, other than legal remuneration, from the litigants by misusing your official position and under the colour of your of office.
- (iii) That your conduct has been pre judicial to the good order and service discipline and your bearing and demeanors are highly unbecoming of a Civil Servant and a Gentleman, thereby earning bad name for the institution.

2. By reason of the above, you appear to be guilty of misconduct under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. Your written defence, if any, should reach the this court within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

4. Intimate whether you desire to be heard in person or through counsel of your choice.

5. A statement of allegations is enclosed.


(KALEEM ULLAH)
Civil Judge-VI
Bannu

Received

29/11/19

(19) (18) 11

To Inquiry officer / Civil Judge No. IV Bannu.
Office of Senior Civil Judge,
Bannu

05-07
ecl.
09/12/2019

Subject: REPLY TO THE SHOW CAUSE NOTICE
NO.1034/SCJ DATED 09.11.2019

Reference to your show cause notice No.1034/SCJ dated 09.11.2019, the reply is hereby submitted by explaining my position viz-a-viz the alleged allegations contained therein.

With utmost regard it is submitted that Senior Civil Judge namely Sultan Hussain served me with an earlier show cause notice No.977 dated 12.07.2017 containing therein the allegation of "corruption and corrupt practices by accepting gratifications, other than legal remuneration and having persistent reputation of being corrupt".

Now through the instant notice as referred to in the heading of this reply the allegation to the effect that complaint No.11706 communicated vide Peshawar High Court, Peshawar letter No.3529/HRC, dated 02.06.2017 has been reiterated against which the undersigned previously submitted a detailed reply dated 17.07.2017 wherein all the baseless, concocted and unsubstantiated allegations were denied with sound reasoning therefore the previous reply may kindly be considered as part and parcel of this reply.

Attested
Superintendent
District & Sessions Judge
16/12/2019

It is once again stated that the previous allegations to the effect that the undersigned was involved in dealing with stolen vehicles and forged currency notes are self negated and rebutted from the official record existed in the office of Senior Civil Judge and to this effect a report was already submitted which indicates that from the alleged allegation of dealing with stolen vehicles was dismissed by the

(9) (20) 20 12

inquiry officer Naeem Ullah Jadoon, CJ-III Bannu by exonerating the undersigned vide report dated 25.04.2016.

It is pertinent to mention that the same report also indicates that the undersigned was Honorably Acquitted vide judgment dated 13.12.2011 from case FIR No. 430 dated 06.07.2010 U/S 489-B PPC registered at P.S Jangal Khel Kohat.

Now reverting back to the complaint No.11706 communicated to the Peshawar High Court, it is most humbly submitted that the fresh notice dated 09.11.2019 refer to the fact finding inquiry conducted by ASJ-III/ Chairman Anti Corruption Committee and thereafter a special report was sent to the office of senior Civil Judge Bannu but no regular inquiry was conducted as was required under the E&D Rules 2011, it is settled law that whenever there are disputed allegations of corruption and corrupt practices then no regular inquiry can be dispensed with nor any punishment can be passed on the basis of merely issuing a show cause notice therefore the previous departmental proceedings initiated against me were set aside by a judgment of Honorable Provincial Service Tribunal Khyber Pakhtunkhwa Peshawar and the case was referred back to departmental hierarchy for conducting de-novo inquiry.

It is once again stated that the alleged allegations as contained in complaint No.11706, nothing was established against me regarding my involvement viz-a-viz the allegations. Therefore the show cause notice as referring to the fact finding inquiry and special report having no force and substance at all.

It is important to mention that I did not take part in any arbitration proceedings between the parties of the complaint and in this regard it is stated that it was purely a civil nature matter, which was resolved through intervention of the Ulama e Karam of the locality and the decision was pronounced that the same dispute was amicably resolved.

Attested

Superintendent
District & Session Judge
Bannu
16/2/21



(Copy of decision of Ulama e Karam is attached with the instant reply).

It is further stated that if there is any apprehension over the decision pronounced by the Ulama e Karam, the deferring parties of the complaint could resort to filing a civil suit before the Court of competent jurisdiction and to resolve the same through Court. No departmental inquiry or disciplinary proceedings regarding my involvement in the matter can be initiated against me which is purely a civil dispute.

It is also important to mention that the complainant Gul Dar Ali and Muhammad Sheraz Khan had already withdrawn the alleged complaint No.11706 preferred to Peshawar High Court on 14.06.17 before Muhammad Tahir Aurangzeb Additional Sessions Judge-III/ Chairman Anti Corruption Committee Bannu.

Both the complainants to this effect recorded their joint statement on 14.06.2017 and stated to the effect that the matter had been resolved through the elders of the locality therefore, the complaint which was made to the Chief Justice Honorable Peshawar High Court Peshawar be withdrawn accordingly.

Attested
Superintendent
District & Session Judge
Bannu
16/2/21

Copy of application dated 14.06.2017 and joint statement dated 14.06.2017 are attached with this reply for ready reference).

Apart from the above, the SHO Muhammad Riaz P.S Basia Khel Tehsil and District Bannu, Haji Noor Sardar and Gul Naqeeb Khan who were also arrayed as respondents in the complaint No.11706 also made their replies that the issue was resolved through intervention of the elders of the locality and in this regard also stated in his reply that on verbal direction of DPO, both the parties were charged U/S 107/150 that no law and order situation be created and all of them did not indicate the name of undersigned that whether he has played any role in the arbitration proceedings.

In this backdrop, no proceedings were initiated against the SHO, Haji Noor Sardar, Gul Naqeeb and Naqeebullah Shah.

It is pertinent to mention that keeping in view the afore referred background of the case, it seems that the alleged complaint No. 11706 is the outcome of malafide, ill-will and the undersigned had been unnecessarily falsely implicated without having any role in the matter hence the undersigned being innocent vehemently denies the vague, non specific and unsubstantiated allegations as contained in the previous show cause notice and in the fresh notice, fact finding inquiry and special report, therefore it is earnestly requested that the intended further de-novo proceedings may kindly be withdrawn in the best interest of justice, fair play and equity by exonerating the undersigned.

Ijaz Khan
Process Server
Senior Civil Judge, Bannu

Dated: 22.11.2019

Attested

Superintendent
District & Session Judge
Bannu
1602/21

REPORT
17.12.2019

Accused official present.

The instant inquiry was marked to the undersigned by the Learned Senior Civil Judge Bannu. Statement of allegation already issued to the accused and previous fact finding inquiry was also attached. On receiving the instant inquiry the undersigned issued notices to the accused and to the complainants. Accused Ijaz appeared and submitted written reply. While not agree with written reply the undersigned issued a charge sheet to the accused. the charge is reproduced as under:

1. **KALEEM ULLAH**, Civil Judge-VI, Bannu, as Inquiry Officer, hereby charge you, Mr. Ijaz Khan, Process Server of the establishment of Senior Civil Judge, Bannu as follows:

That you, while posted as Process Server, committed the following irregularities:

- (i) That the as per complaint No. 11706 of Mr. Gul Dar Ali Khan etc communicated to Hon'ble Peshawar High Court, Peshawar vide letter No. 3529/HRC, dated 02.06.2017, you were involved in corruption and corrupt practices having persistent reputation of being corrupt, being involved in dealing with stolen vehicles, forged currency notes and living beyond your ostensible means of income.
- (ii) That you have been guilty of corruption and corrupt practices by getting involved in malpractices leading to gabbing of gratifications, other than legal remuneration, from the litigants by misusing your official position and under the colour of your of office.
- (iii) That your conduct has been pre judicial to the good order and service discipline and your bearing and demeanors are highly unbecoming of a Civil Servant and a Gentleman, thereby earning bad name for the institution.

2. By reason of the above, you appear to be guilty of misconduct under rule 3 of the Khyber Pakhtunkhwa

Sub
Kaleem Ullah
Civil Judge VI
Bannu

Attested
[Signature]
Superintendent
District & Session Judge
Bannu
16/12/2019

23

5

Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

- 3. Your written defence, if any, should reach the this court within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
- 4. Intimate whether you desire to be heard in person or through counsel of your choice.
- 5. A statement of allegations is enclosed.

The complainants' party appeared and recorded their statement as PW-1 to PW-3 and statement of superintendent of the Session court is recorded as PW-4.

PW-1 is Guldar Ali, who stated that a civil case was pending in the civil court Bannu and Ijaz Khan accused Alongwith some other persons were nominated as a Jirga Members. 09 Tola of Gold and three faces rupees was fixed as amount and do not want to proceed against the accused. In his cross examination he denied his signature on the complaint filed before august Peshawar High Court Peshawar which is Mark "A" and in this respect stated that Hafeez Ullah has signed the same for him. Moreover, Guldar Ali and Sher Ayaz Khan also submitted an application for withdrawal of their complaint, which is EX-PW-1/1.

PW-2 is Sher Ayaz Khan, who also stated that to have received back the Zar e Zamanat from the Jirga members including Ijaz Khan accused. He also stated that he do not wish to proceed against accused facing inquiry.

PW-3 is Hafeez Ullah, who stated that a civil case was pending in the civil court Bannu and Ijaz Khan accused Alongwith some other persons were nominated as a Jirga

16/2/22
Superintendent
District & Session Judge
Bannu

Kaleem Ullah
Civil
Bannu

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The instant inquiry shall be forwarded to the learned SCJ Bannu for onward proceedings.

imposed upon the accused facing inquiry. statements of complainants, a minor penalty may kindly be with the mitigating situations created by the concessional Therefore, keeping in view the above discourse coupled

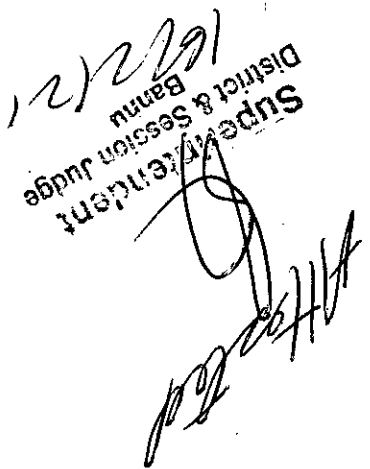
murderous effects for the harmony of a society. is not countered and stopped then it will have disastrous and upon that trust then it must be countered at the very outset. If it some official of court endeavours to throw stains of suspicions Relation of litigants with courts are based on trust and if settlement; still he could not be exonerated on this score alone.

agree to withdraw their complaint through some outside Accused facing inquiry somehow made the complainant party himself and his other friends on the pretext of doing Jirga. court, Bannu. Taken money to the tune of Rs.300,000/- for matter/issue which was already being subjudice before civil clear that the accused facing inquiry has stepped into the Statements of PW-1, PW-2 and PW-3 make it crystal

Suggestions:

Bannu and is Ex-PW-4/1. 04.07.2017 by Chairman Corruption Committee District Courts Session court Bannu, who produced the special report dated PW-4 is Shafiqat Ullah Superintendent District and by him.

Members, 09 Tola of Gold and three lacs rupees was fixed as Zar-e-Zammat. He also stated that to have received the whole amount and do not want to proceed against the accused. In his cross examination he denied the signature of PW-1 being made



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No. 109 /SCJ DATED AT BANNU THE 13 /01/2020 5

FINAL SHOW CAUSE NOTICE

I, **ABDUL QAYYUM SIDDIQI**, Senior Civil Judge, Bannu, Competent authority, within the contemplation of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Ijaz Khan, Process Server as follows:-

(i). That consequent upon the completion of inquiry No.02 of the year 2019 conducted against you by the Inquiry Officer your involvement in outside settlement of civil cases/ dispute as Jigra members is proved. Your conduct is found unbecoming of an official of the Court having no sense of responsibility.


(ii). On going through the findings and recommendations of the Inquiry Officer, the material on record and other connected papers including your defence before the Inquiry Officer;

AND WHEREAS, I am satisfied that you have committed the following acts which are amenable under rule 3 (b) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

a) Guilty of misconduct.

THEREFORE, I, competent authority in view of the said rules above hereby tentatively decide to impose upon you minor penalty of "censure" under rule 4(I)(a)(i) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

IT IS, THEREFORE, required of you to show cause as to why minor penalty within the said rules above may not be imposed upon you and you are given an opportunity of personal hearing if you so desire in which respect you are also directed to intimate this court.

Attested

 Superintendent
 District & Session Judge
 Bannu
 16/12/2019

29

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YOU, shall submit your reply to the final show cause notice within seven (07) days failing which it shall be presumed that you have no defense to offer and you shall be proceeded against ex-parte.

A copy of the findings of the inquiry officer is enclosed.

Dated: 13.01.2020

ABDUL QAYYUM SIDDIQI
Senior Civil Judge/Competent Authority

[Signature]
14/1/20

[Handwritten initials]

Attested
[Signature]
Superintendent
District & Session Judge
Bannu
16/2/21

DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
OFFICE OF THE SENIOR CIVIL JUDGE, BANNU

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OFF: 0928-9270195 FAX: 0928-9270195
scjbannu@gmail.com

No. 145 /SCJ

Dated At Bannu the 21 /01/2020

OFFICE ORDER:-

Whereas, Mr. Ijaz Khan, Process Server was proceeded against under the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules 2011 for different charges including his outside involvement in civil cases/ dispute as Jirga member.

And whereas, inquiry was conducted into the allegations and the Inquiry Officer, in his report held that, the charges/allegations is proved on record.

And whereas, Final Show Cause Notice was issued to Mr. Ijaz Khan, Process Server of this establishment bearing No. 109, dated 13.01.2020 with proposed penalty and he could not defend the suggested penalty. Therefore, he is held guilty of misconduct and liable to punishment under the rules *ibid*.

Now, therefore, I, Abdul Qayyum Siddiqi, Senior Civil Judge, Bannu, as competent authority impose on the accused / official namely Ijaz Khan, Process Server, the penalty of "censure" as provided under the rule 4(1)(a)(i) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) rules 2011.

Accepted
Superintendent
District & Sessions Judge
16/2/21

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

Endst: No. 146-149 /SCJ

Dated At Bannu the 21 /01/2020

Copy forwarded for information to:

1. The Hon'ble District & Sessions Judge, Bannu.
2. The District Accounts Office, Bannu.
3. The official concerned.
4. Office copy.

16/2/21
PS

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

To

The Honorable
District & Sessions Judge Bannu.

Subject: DEPARTMENTAL APPEAL AGAINST IMPUGNED
ORDER DATED 21.01.2020 PASSED BY LEARNED
SENIOR CIVIL JUDGE BANNU, WHEREBY MINOR
PENALTY OF "CENSURE" WAS IMPOSED UPON
THE APPELLANT.

Respectfully Sheweth:-

Brief facts giving rise to this departmental appeal are as under:-

1. That the appellant was re-instant in service vide order dated 17.10.2019 passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar with directions to the respondents to conduct De-novo enquiry in the matter.
2. That the learned Senior Civil Judge Bannu appointed an enquiry officer namely Kaleemullah Civil Judge, VI, Bannu to conduct De-novo enquiry.
3. That charge sheet was issued alongwith a final show-cause notice which was responded by the appellant by denying the allegations as alleged therein.
4. That the enquiry officer recommended for imposition of minor penalty vide order dated: 17.12.2019. (Copy of order is attached).
5. That the learned Senior Civil Judge being competent authority imposed the minor penalty of "CENSURE" upon the appellant vide order dated 21.01.2020.

21.02.2020
Superintendent
District & Session Judge
Bannu

Attested
Superintendent
District & Session Judge
Bannu
16/2/21

(5) (30)

6. That inquiry was conducted on the complaint of Guldar Ali regarding involvement of the appellant as arbitrator in a Civil Dispute and also dealing with stolen vehicles and forged currency notes.
7. That it was concluded by the enquiry officer that no allegation of dealing with stolen vehicles established against the appellant or he was found involved in the dealing with forged currency notes.
8. That a complaint No.11706 was filed before the Peshawar High Court Peshawar by one Guldar Ali which was withdrawn by him through an application dated 09.12.2019 wherein as per Para-3 it was mentioned;

"یہ کہ اعجاز خان ولد ممتاز خان ہمارا گناہگار نہیں ہے اور نہ ہی اس نے ہمارے مائین ٹالٹھا ایجنٹ کا کردار ادا کیا ہے۔ ہمارے مائین ٹالٹھا مفتی ہدایت اللہ شاہ، مفتی رضوان صاحب مقرر ہوئے تھے۔ جنہوں نے ہمارے مائین فیصلہ ٹالٹھا صادر کی ہے جو کہ تحریر طور پر بھی موجود ہے اور شکل پر بھی موجود ہے اور جس پر ہم یقین راضی ہیں۔ قبل ازیں ہم نے مورخہ 14.06.2017 کو ASJ-III میں کپیٹنٹ نمبر 11706 واپس کرنے کی استدعا کی تھی۔"

لہذا استدعا ہے کہ ہمارا کپیٹنٹ نمبر 11706 بلا مزید کارروائی واپس فرمائی جاوے تاکہ اس سے کسی کو ناجائز نقصان نہ پہنچے۔

مورخہ 09.12.2019

شیر آواز خان کپیٹنٹ کنندگان

گلداری علی خان

9. That keeping in view the above referred statement of the complainant, he categorically stated that the appellant has no involvement in the arbitration proceedings or acted as arbitrator, therefore, the findings of the learned Senior Civil

Superintendent
District & Session Judge
Bannu

21-02-2021
Superintendent
District & Session Judge
Bannu


(6)

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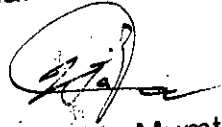
Judge to the effect that the allegations of involvement of the appellant in a civil dispute as arbitrator has no substance at all, therefore, reached to a conclusion which cannot be justified on the basis of the above candid statement of the complainant Guldar Ali Khan and Sher Ayaz Khan.

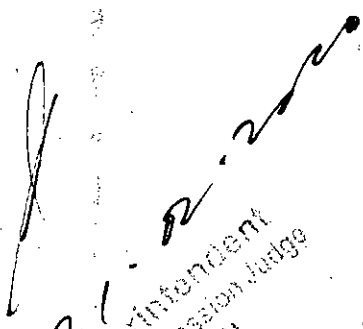
Keeping in view what has been stated above it is therefore, humbly prayed that the impugned order dated 21.01.2020 passed by the learned Senior Civil Judge being competent authority in the case of appellant may kindly be set aside, and I may kindly be exonerated from the alleged allegations being innocent and having no involvement in the matter.

Dated: 06.02.2020

Attested

Superintendent
District & Session Judge
Bannu
16/2/20

Appellant


Ijaz Khan S/o Mumtaz Khan
Process Sarver in the Court of
Senior Civil Judge Bannu


Superintendent
District & Session Judge
Bannu

(02) (04) 32

THE COURT OF MUNAWAR KHAN
DISTRICT & SESSIONS JUDGE/APPELLATE AUTHORITY,
BANNU

Departmental Appeal No. 02 of 2020

Date of Institution: 21-02-2020

Date of Decision: 17-03-2020

Ijaz Khan, Process Server, Establishment of Senior Civil Judge,
Bannu..... Appellant

Versus

Senior Civil Judge, Bannu / Competent Authority Respondent

AND

Departmental Appeal No. 12 of 2020

Date of Institution: 06-03-2020

Date of Decision: 17-03-2020

Ijaz Khan, Process Server, Establishment of Senior Civil Judge,
Bannu..... Appellant

Versus

Senior Civil Judge, Bannu / Competent Authority Respondent

JUDGMENT :

1. This single judgment is meant to dispose of the above cited two departmental appeals, as common question of law & facts is involved therein. Through the former appeal, the appellant has impugned order dated 21.01.2020 passed by the learned Senior Civil Judge, Bannu / Competent Authority, whereby, minor penalty of "Censure" was imposed upon him as contemplated under Rule 4(1)(a)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, while through the latter appeal, he has impugned order

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

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District & Session Judge
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dated 17.02.2020 of the same authority, whereby, his application dated 23.01.2020 for the grant of back benefits w.e.f 22.07.2017 to 17.10.2017, pursuant to his reinstatement in service, was rejected.

2. Brief facts giving rise to filing these appeals are such that the appellant was serving as Process Server in the establishment of Senior Civil Judge, Bannu, however, on 22.07.2017, he was dismissed from service on the charges of his being involved in corruption & corrupt practices, 'living beyond his ostensible means of income and misusing his official position as well as having tainted service record, vide order dated 22.07.2017 of the learned Senior Civil Judge, Bannu, against which, the appellant filed Departmental Appeal which could not be decided within the statutory period, hence, he moved the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.1232/2017, which was accepted with directions to conduct a *de novo* inquiry within 90 days, however, the matter of back benefits was subjected to the outcome of *de novo* inquiry vide judgment dated 17.10.2019, thus, the appellant was reinstated into service and after conducting *de novo* inquiry by Mr. Kaleem Ullah, Civil Judge-VI, Bannu, the learned Senior Civil Judge, Bannu / Competent Authority found him guilty of misconduct as defined in the rules *ibid*, hence, after complying with the codal formalities, imposed upon him a minor penalty of "Censure" as envisaged under Rule 4(1)(a)(i) of the *ibid* rules vide the impugned order dated 21.01.2020. Hence, the former appeal.

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(19) (6) 34

3. On 23.01.2020, the appellant submitted an application to the learned Senior Civil Judge, Bannu for grant of back benefits w.e.f 22.07.2017 to 17.10.2017, which application was rejected on the ground that he had not performed duties during the period under dismissal and since he had been penalized, therefore, was not entitled to back benefits vide order dated 17.02.2020. During pendency of the former appeal, the appellant feeling dissatisfied with the order dated 17.02.2020, preferred the latter appeal, thus, both were clubbed by this court vide order dated 06.03.2020, as common question of law & fact was involved therein. Comments of the learned Senior Civil Judge, Bannu / Competent Authority were sought, which were accordingly received.

4. I have heard the appellant personally in both the appeals and gone through the available record.

5. Contention of the appellant Ijaz Khan (Process Server) during personal hearing was that although, a joint complaint No.11706 was filed / submitted against him by Guldar Ali and Sher Ayaz Khan before the Hon'ble Chief Justice, Peshawar High Court, Peshawar, but during *de novo* inquiry proceedings, the same was withdrawn through written application dated 09.12.2019 and in para No.3 of the application, it was specifically and clearly written that he (Ijaz Khan) was not involved in the settlement of dispute between them and the other party and the middlemen in settlement of the dispute were Mufti Hidayat Ullah Shah & Mufti Rizwan. That proceedings against him

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District & Session Judge
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were initiated on the basis of complaint No.11706 and the complainants have withdrawn the said complaint, therefore, the learned Senior Civil Judge, Bannu / Authority has passed the impugned order dated 21.01.2020 (imposing minor penalty of "Censure") against law, facts and natural justice. He requested for setting aside the impugned order dated 21.01.2020 and for exonerating him from the charges leveled against him.

6. In the latter, Departmental Appeal No.12, he requested for setting aside the impugned order dated 17.02.2020 and while accepting his former appeal No.02 of 2020, he be allowed / granted back benefits from 22.07.2017 to 17.10.2017.

7. Perusal of case file revealed that a joint complaint No.11706 was submitted against the appellant (Ijaz Khan Process Server) before the Hon'ble Chief Justice, Peshawar High Court, Peshawar by Gul Dar Ali Khan and Sher Ayaz Khan. The said complaint was sent to this office with covering letter No.3529/HRC dated 02.06.2017 with a direction for necessary action and report within 30 days. My learned predecessor in office marked the same to the then learned ASJ-III, Bannu (Chairman, Anti-Corruption Committee, District Judiciary, Bannu) for inquiry and report. The learned ASJ-III, Bannu (Mr. Muhammad Tahir Aurangzeb) submitted report after inquiry with the following words:

"The Process Server Ijaz Khan has misused his official position and he is involved in corruption and corrupt practices thereby

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bringing bad name to the institution. Not only that his service record is tainted, but at the same time there is evidence that he remained involved in handling stolen vehicles, counterfeit currency and is living beyond his ostensible means of income. It is recommended that he be dealt with accordingly”

8. Special Report dated 04.07.2020 ExpW-4/1 was submitted by the then learned ASJ-III, Bannu with a request to initiate disciplinary proceedings against the appellant. Pursuance to the Special Report of the learned ASJ-III, Bannu / Chairman Anti-Corruption Committee, the then learned Senior Civil Judge / Competent Authority (Mr. Sultan Hussain) initiated departmental proceedings against the appellant and on conclusion of the departmental proceedings, he dismissed the appellant from service vide order dated 22.07.2017.

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9. The appellant approached this office in appeal, but due to not deciding of the appeal within 90 days (statutory period), the appellant submitted Service Appeal No.1232/2017 before the Provincial Service Tribunal, Khyber Pakhtunkhwa, Peshawar against the order dated 27.07.2017 of the learned Senior Civil Judge, Bannu / Competent Authority.

10. The Hon'ble Provincial Service Tribunal, Peshawar was pleased to accept the appeal of the appellant, setting aside the impugned order dated 22.07.2017 reinstating the appellant into service and directed that *de novo* inquiry be conducted within a period of 90 days.

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District & Sessions Judge
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11. On receipt of the judgment dated 17.10.2019 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar, the learned Senior Civil Judge, Bannu / Competent Authority after fulfilling the required legal formalities, appointed Mr. Kaleem Ullah, Civil Judge-VI, Bannu as Inquiry Officer, who conducted the inquiry against the appellant and submitted his report with the following suggestions:

"Suggestions:
Statements of PW-1, PW-2 and PW-3 make it crystal clear that the accused facing inquiry has stepped into the matter/issue which was already being subjudice before civil court, Bannu. Taken money to the tune of Rs.300,000/- for himself and his other friends on the pretext of doing Jirga. Accused facing inquiry somehow made the complainant party agree to withdraw their complaint through some outside settlement; still he could not be exonerated on this score alone.

Relation of litigants with courts are based on trust and if some official of court endeavours to throw stains of suspicions upon that trust then it must be countered at the very outset. If it is not countered and stopped then it will have disastrous and murderous effects for the harmony of a society.

Therefore, keeping in view the above discourse coupled with the mitigating situations created by the concessional statements of complainants, a minor penalty may kindly be imposed upon the accused facing inquiry.

The instant inquiry shall be forwarded to the learned SCJ Bannu for onward proceedings."

17/3/20
Kaleem Ullah

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District & Session Judge
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12. The learned Senior Civil Judge, Bannu / Authority after receipt of findings of the inquiry officer, issued the appellant final show cause notice which the appellant replied.

13. The learned Senior Civil Judge / Authority vide order dated 21.01.2020 imposed the minor penalty of "Censure" upon the appellant. It is a fact that the complainants Guldar Ali Khan and Sher

(23/10/38)

Ayaz Khan have submitted a complaint No.11706 before the Hon'ble Chief Justice, Peshawar High Court, Peshawar. Serious allegations of receiving money from the litigants have been leveled against the appellant. According to the contents of the said complaint, the appellant himself came to the complainants introducing himself as court staff and took an amount of Rs.4,00,000/- cash and 09 tolas gold ornaments as security and promised that he will settle the dispute between them and the other party whose case was pending before a civil court. The appellant was an active member of the gang which gang used to obtain huge amounts as security from different people and after success or failure in settling the dispute, the said gang used to misappropriate the amounts.

14. During the inquiry proceedings, Guldar Ali Khan and Sher Ayaz Khan although, have withdrawn the complaint, but they have not denied of filing the said complaint. So, mere withdrawal of the complaint before the inquiry officer is meaningless. By name complaint has been filed against the appellant, the wordings of which are shameful for a staff member of this establishment.

15. According to the Special Report of the then learned Additional District & Sessions Judge-III, Bannu, the appellant was involved in corruption and was living beyond his ostensible means. The then learned Additional District & Sessions Judge-III, Bannu was also a Chairman of Anti-Corruption Committee, District Judiciary, Bannu. His Special Report could not be ignored altogether.

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District & Session Judge
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16/2/21

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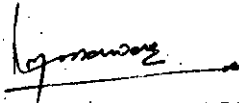
16. The learned Senior Civil Judge / Authority keeping in mind all the above noted facts & circumstances of the case of the appellant has extended extraordinary leniency in the matter and has imposed only a minor penalty of "Censure" upon the appellant vide the impugned order dated 21.01.2020. The appellant deserves no further leniency. Appeal in hand has no merits.

17. So far as the latter appeal of the appellant is concerned, the appellant submitted an application before the learned Senior Civil Judge / Authority for the grant of back benefits from 22.07.2017 to 17.10.2017. In para No.3 of the application, the appellant has wrongly written that he was exonerated from the charges during inquiry proceedings. The learned Senior Civil Judge / Authority vide a detail and convincing order has refused awarding of back benefits to the appellant holding that the appellant has been penalized, hence, not entitled for back benefits. The learned Senior Civil Judge / Authority has passed the impugned order dated 17.02.2020 on the principle of no work and no gain. So, this appeal is also groundless. Both these appeals are, therefore, dismissed.

18. Requisitioned record be sent back with a copy of this order to the quarter concerned.

Announced
17.03.2020


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MUNAWAR KHAN
District & Sessions Judge,
Bannu / Appellate Authority

Departmental Appeal No. 02 of 2020
(Ijaz Khan Vs Senior Civil Judge, Bannu)

عدالت صاحب سٹیٹس سول جج صاحب ہون (۱۵)

(40)

درخواست گزار دیکھے جانے کے Back benefits از 22-7-17 تا 15-7-19
بوجوہات ذیل

ضابطہ عالی! ذیل عرض ہے

- ۱۔ یہ کہ سائل کو عدالت صاحب نے صف 22-7-17 کو نوٹری کے برخاستہ کیا تھا۔ اور عدالت سروس ٹریبونل نے صفو 17-10-19 کو اپنی نوٹری میں بحالی کے احکامات جاری کیے۔
- ۲۔ یہ کہ ساتھ ہی De-novo انکوائری کے احکامات بھی جاری کیے گئے تھے۔
- ۳۔ یہ کہ انکوائری میں سائل کو الزامات سے تبرہ الذاہم قرار دیا گیا۔
- ۴۔ یہ کہ اب سائل کو Back benefits دینا استدعا ہے۔

کیونکہ استدعا ہے کہ سائل کو Back benefits دینے کے احکامات صادر فرمائے جاوے۔ تاہم العاف کے تقاضے پورے ہو سکیں
سائل دُعا فرماتا۔
23-01-2020

الحاجزبان دم عدالت سٹے پ ہون

ATTESTED
20 FEB 2020

Attested
Superintendent
District & Session Judge
Bannu

Copying Agency
Higher Court Bannu
16/2/21

Sir

Report
Assistant of Distt.
Accounts officer Bannu
is required to check
if applicant is entitled or
not for the back benefits.

COB 738

1. Registration No.	
2. Date of Presentation of Application	21-2-2020
3. Date of Receipt of the file	21-2-2020
4. Date of Preparation of copy	21-2-2020
5. Date of Delivery of copy	21-2-2020
6. No. of copies / words	01
7. Ordinary Fee	
8. Urgent Fee	
9. Total Fee	
10. Signature of Copyst	

Distt. Account officer
Bannu to be approached for
Suggestion.

DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
OFFICE OF THE SENIOR CIVIL JUDGE, BANNU

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OFF: 0928-662048
FAX: 0928-9270195
sejbannu@gmail.com

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No. 164 / SCJ DATED AT BANNU THE 25 / 01 / 2020

To: **The District Accounts Officer,
Bannu.**

Subject: **BACK BENEFITS**

Memo.

Mr. Ijaz Khan, process server of this establishment was removed from services but on acceptance of his appeal by Khyber Pakhtunkhwa Service Tribunal, Peshawar, he was again reinstated into services but his back benefits were subjected to the fat of de-novo inquiry vide judgment dated 17.10.2019(Copy attached). Now after conducting de-nov inquiry, the applicant has been awarded minor penalty of "censure" on the recommendation of inquiry officer(Copy of order annexed).

Therefore, it is desired to request you to assist the undersigned as to whether the applicant is entitled to the back benefits or not in the circumstances mentioned above.

Handwritten signature

**Supreme Court
District & Session Judge
Bannu**

18/2/20

(Abdul Qayyum Siddiqi)
Senior Civil Judge,
Bannu



(42) 5

**OFFICE OF THE
DISTRICT ACCOUNTS OFFICER
BANNU**

FAX/PHONE NOs 0928-9270030 & 68

No.DAO/BU/PR-I/Bank / 2019-20/2305

Dated: 03/02/2020

To

The Senior Civil Judge,
Bannu.

SUBJECT: BACK BENEFITS.

Memo;

Please refer to your office letter No.164/SCJ/dated: 25.01.2020 on the subject noted above.

In this connection, it is, submitted that the subject case may be dealt in light of FR-54 of FR&SR (Copy enclosed for ready reference). If there is any ambiguity, then the case may be referred to law department Government of Khyber Pakhtunkhwa, Peshawar for further guidance, please.

Attested

**Superintendent
District & Session Judge
Bannu**

16/2/20

4/2/2020

District Accounts officer
Bannu

Code No.

FSL - 04

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COMBINED SET OF F. R. & S. R. VOLUMES I & II

[With Model Questions & Answers]

REVISED EDITION



[Faint, illegible text and markings, possibly a library stamp or handwritten notes.]

servant who has been suspended while on leave, the subsistence grant should be calculated with reference to his leave salary or with reference to his pay. Attention in this connection is invited to F.R. 55, which prohibits grant of leave to Government servants under suspension. Such Government servant, therefore, ceases to be on leave as soon as he is placed under suspension, and the subsistence grant in his case also has to be calculated with reference to the pay which was admissible to him on the eve of the commencement of the leave.

These orders take effect from the 1st of December, 1969.

[G.P., M.F., O.M. No. F. 12(32)-R3/70,
 dated the 14th February, 1970.]

*[F.R. 54. Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty -

- (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or
- (b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.

*F.R. 54 substituted by the S.R.O. 718(I)/93, the 2nd August, 1993, the Gaz. of Pak., Extr., Pt. II, P. No. 1339, dt. August 22, 1993. (Effective from the 30th June, 1993).

Explanation. - In this rule, "revising authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal.]

*[54-A. If a Government servant, who has been" suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.]

F.R. 55. Leave may not be granted to a Government servant under suspension.

*F.R. 54-A, inserted by S.R.O. 1143(I)/80, dt. 10th November, 1980, the Gaz. of Pak., Extr., Pt. II, P. No. 2215, dt. November 20, 1980.

IN THE COURT OF ABDUL QAYYUM SIDDIQI
SENIOR CIVIL JUDGE, BANNU

(P)

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ORDER#1
23.01.2020

Petitioner namely Mr. Ijaz Khan, process server submitted an application for back benefits. It be registered.

Opinion be sought from District Accounts Officer, Bannu. File be put up after receipt of opinion.

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

ORDER#2
03.02.2020

Opinion from District Accounts Officer, Bannu vide letter No.DAO/BU/PR-I/Bank/2019-20/2305,dated 03.02.2020 received.

File be put up for perusal on 17-02-2020.

(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

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b
Superintendent
District & Session Judge
Bannu
16/2/20

ORDER#3
17.02.2020

Petitioner namely Mr. Ijaz Khan, process server in person present.

Briefly stated that the petitioner namely Mr. Ijaz Khan, process server was dismissed from his services vide order dated 22.07.2017. for which the petitioner filed an appeal before Khyber Pakhtunkhwa Service Tribunal Peshawar for reinstatement. On acceptance of appeal No. 1232/2017, dated 17.10.2019, the petitioner was reinstated into services.

ATTESTED
21 FEB 2020

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(Lower Court Bannu)

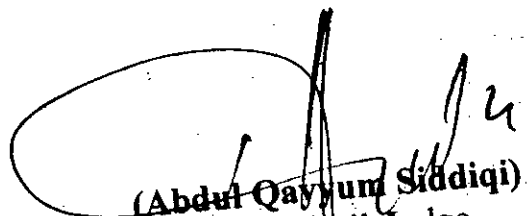
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The issue of back benefits was subjected to outcome of the de-novo enquiry. After conclusion of de-novo inquiry, minor penalty of **Censure** was imposed upon accused/ official as he was found guilty of part allegation vide order No. 145 dated 21.01.2020. Admittedly, the accused/ official has not performed his duties during the period under dismissal. The accused/ official was not held entitled to any back benefits at the time of final order of imposing penalty of censure. Since he has been penalized and was not entitled to back benefits.

Therefore, the petition being without merit is rejected. File be consigned.

Announced
17.02.2020


(Abdul Qayyum Siddiqi)
Senior Civil Judge
Bannu

attested

Superintendent
District & Session Judge
Bannu

- 1- Registration No: 738
- 2- Date of Presentation of Application 21-2-2020
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- 7- Ordinary Fee /
- 8- Urgent Fee /
- 9- Total Fee /
- 10- Signature of Copyist AS

ATTESTED
20 FEB 2020

Copying Agency
Lower Court Bannu

(3) (46)

To

The Honorable
District & Sessions Judge Bannu.

**SUBJECT: DEPARTMENTAL APPEAL AGAINST IMPUGNED
ORDER DATED 17.02.2020 WHEREBY
APPLICATION DATED 23.01.2020 FOR GRANT OF
BACK BENEFIT WAS DISMISSED.**

Respectfully Sheweth:-

Brief facts giving rise to this departmental appeal are as under:-

1. That the appellant was re-instated in service vide order dated 17.10.2019 passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar with directions to the respondents to conduct De-novo enquiry in the matter.

That the learned Senior Civil Judge Bannu appointed an enquiry officer namely Kaleemullah Civil Judge, VI, Bannu to conduct De-novo enquiry.

3. That charge sheet was issued alongwith a final show-cause notice which was responded by the appellant by denying the allegations as alleged therein.

4. That the enquiry officer recommended for imposition of minor penalty vide order dated: 17.12.2019. (Copy of order is attached).

5. That the learned Senior Civil Judge being competent authority imposed the minor penalty of " **CENSURE**" upon the appellant vide order dated 21.01.2020.

Attorney
Superintendent
District & Session Judge
Bannu
16/2/20

Superintendent
District & Session Judge
Bannu
20-3-2020

6. That inquiry was conducted on the complaint of Guidar Ali regarding involvement of the appellant as arbitrator in a Civil Dispute and also dealing with stolen vehicles and forged currency notes.
7. That it was concluded by the enquiry officer that neither allegation of dealing with stolen vehicles established against the appellant nor he was found involved in dealing with forged currency notes.
8. That a complaint No.11706 was filed before the Peshawar High Court Peshawar by one Guldar Ali which was withdrawn by him through an application dated 09.12.2019 wherein as per Para-3 it was mentioned;

"یہ کہ حاجز خان ولد ممتاز خان ہمارا گناہگار نہیں ہے اور نہ ہی اس نے ہمارے مابین ثالث یا ایجنٹ کا کردار ادا کیا ہے۔ ہمارے مابین ثالثان مفتی ہدایت اللہ شاہ، مفتی رضوان صاحب مقرر ہوئے تھے جنہوں نے چارج مابین فیصلہ ثالثی صادر کی ہے جو کہ تحریر طور پر بھی موجود ہے۔ اور جس پر ہم یقین راضی ہیں۔ قبل ازیں ہم نے مورخہ 14.06.2017 کو ASJ-III میں کمپلیٹ نمبر 11706 واپس کرنے کی استدعا کی تھی۔"

لہذا استدعا ہے کہ ہمارا کمپلیٹ نمبر 11706 بلا مزید کارروائی واپس فرمائی جاوے تاکہ اس سے کسی

کو نا جائز نقصان نہ پہنچے۔

مورخہ 09.12.2019

شیر آواز خان کمپلیٹ کنندگان"

گدار علی خان

9. That keeping in view the above referred statement of the complainant, he categorically stated that the appellant has no involvement in the arbitration proceedings or acted as arbitrator, therefore, the findings of the learned Senior Civil

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Judge to the effect that the allegations of involvement of the appellant in a civil dispute as arbitrator has no substance at all, therefore, reached to a conclusion which cannot be justified on the basis of the above candid statement of the complainant Guldar Ali Khan and Sher Ayaz Khan.

10. That the competent authority also sought opinion of the District Account Officer Bannu vide letter dated: 25.01.2020, that whether back benefit can be granted to the appellant.

11. That the District Account Officer Bannu vide letter dated 03.02.2020 addressed to the Sr. Civil Judge Bannu wherein he referred to FR-54 which may deal with the issue of grant of back benefit with further remarks that if there is any ambiguity, then the case may be referred to law department Government of Khyber Pakhtunkhwa for further guidance.

It is pertinent to mention that no guidance was obtained by the competent authority from law department to decide the issue of back benefit or any law was specifically quoted which restrains the grant of back benefit to the appellant.

12. That it is pertinent to refer to FR-54 for ready reference;

[F.R. 54 Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty-\

Attended
[Signature]
Superintendent
District & Session Judge
Bannu
16/2/21

[Signature]
Superintendent
District & Session Judge
Bannu
02/3/2020

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- (a) If he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or
- (b) -----"

It is pertinent to mention that the above rule will only be applicable when an FIR is registered against a Civil servant from whom, he is acquitted by the court of competent jurisdiction.

Since no FIR has been registered against the appellant only departmental proceedings were conducted on the basis of unfounded allegations and it was categorically held by the inquiry officer that no charges of dealing with stolen vehicle or counterfeit currency established against him, therefore denial of grant of back benefits having no substance and force in the eyes of law.

Even otherwise, competent authority has imposed the penalty of CENSURE upon the appellant against which a separate departmental appeal has been moved before your Honour, therefore, the appellant cannot be penalized or vexed twice for the same cause in terms of the mandate of Article-13 of Constitution of Pakistan, hence the impugned order dated 17.02.2020 restraining back benefits to the appellant is void ab initio liable to be set aside on this ground alone.

Keeping in view what has been stated above it is therefore, humbly prayed that the impugned order dated 17.02.2020 passed by the learned Senior Civil Judge being

Accepted
[Signature]
 Superintendent
 District & Session Judge
 Bannu
 16/2/21

[Signature]
 08/3/2021

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competent authority in the case of appellant may kindly be set aside, and consequently grant back benefits with effect from 22.07.2017 to 17.10.2019 as the appellant during the period when he was removed from service did not gain financially elsewhere.

Dated: 26.02.2020


Appellant



Ijaz Khan S/o Mumtaz Khan
Process Sarver in the Court of
Senior Civil Judge Bannu

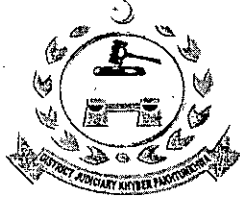
66/3/2020

Attested



Superintendent
District & Session Judge
Bannu

16/2/20



SD

DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT & SESSIONS JUDGE, BANNU

No: 354 /D & SJ BANNU

DATED AT BANNU THE 16-02-2021

AUTHORITY LETTER

Mr. Shafqat Ullah Khan, Superintendent of this Sessions Division, is hereby nominated as Representative in Service Appeal No. 3728 of 2020, titled "Ijaz Khan Vs District & Sessions Judge, Bannu & another" fixed before the Khyber Pakhtunkhwa Service Tribunal, Peshawar for 17.02.2021, on behalf of the respondents No.1 & 2.


District & Sessions Judge,
Bannu
District & Sessions Judge
Bannu.



DISTRICT JUDICIARY KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT & SESSIONS JUDGE, BANNU

No.

/DSJ BANNU

DATED AT BANNU THE 12-01-2020

AUTHORITY LETTER

Mr. Shafqat Ullah Khan, Superintendent of this Sessions Division, is hereby authorized to appear as a departmental representative on behalf of undersigned and Senior Civil Judge, Bannu (Respondents No. 01 & 02) in the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No. 3728/2020 titled "Ijaz Khan VS District & Sessions Judge, Bannu etc".


District & Sessions Judge,
Bannu