

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 15000/2020

Date of Institution ... 24.11.2020

Date of Decision ... 18.05.2022

Muhammad Kabir Shah S/O Hakeem Shah, R/O Tarkha, Nowshera,
Ex-Bailiff, Office of Senior Civil Judge Nowshera.

... (Appellant)

VERSUS

District & Sessions Judge, Nowshera and two others.

... (Respondents)

MR. ARBAB SAIF-UL-KAMAL
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant was appointed as Naib Qasid on 02.07.1995 and was later on promoted as Bailiff. The appellant was serving as Bailiff in District Courts Nowshera, when he made spot inspection upon order dated 24.04.2017, passed by the Civil Judge in Civil Suit titled "Shamsher Ali Versus Collector etc". The appellant visited the spot and submitted his report on 25.04.2017. Plaintiff Shamsher Ali submitted a complaint to the District & Sessions Judge Nowshera, alleging therein that the appellant had received Rs. 600/- from him as court fee, while received Rs. 1000/- as bribe from Contractor namely Sher Wali for the purpose



of mentioning wrong Khasra Numbers in the report. On submission of reply by the appellant, the then District & Sessions Judge Nowshera straight away issued final show-cause notice to the appellant and imposed major penalty of removal from service upon the appellant vide order dated 06.06.2017. The appellant challenged the same through filing of departmental appeal, which was dismissed vide order dated 20.10.2017. The same was challenged by the appellant through filing of Writ Petition before the august Peshawar High Court, Peshawar. Vide order dated 18.11.2020 passed by august Peshawar High Court, Peshawar, the writ petition was sent to this Tribunal for treating it as service appeal and to decide the same in accordance with law.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the allegations were factual in nature, therefore, competent Authority was required to have appointed an inquiry officer for conducting regular inquiry in the matter; that there are numerous rulings of worthy apex courts that major penalty cannot be awarded without regular inquiry, however in case of the appellant, he was straight away issued final show-cause notice and major penalty of removal from service was imposed upon him in a summery manner; that the complainant had submitted an affidavit before the competent Authority, wherein he had mentioned that he does not want to further pursue his complaint but the affidavit so submitted by the complainant was ignored by competent Authority; that the appellant had submitted correct report regarding the spot inspection and this fact was proved during the subsequent proceedings made in the concerned Civil Suit; that the appellant is having an unblemished service record of more than 22 years service but no benefit




of the same was extended to him. He relied upon 2005 PLC (C.S) 1505, 2009 SCMR 339, 2005 SCMR 153, 2017 SCMR 56 and judgment dated 15.02.2021 passed by this Tribunal in Service Appeal No. 1156/2017 titled "Shah Room Versus District & Sessions Judge Nowshera".

4. On the other hand, learned Additional Advocate General for the respondents has contended that the appellant had himself admitted the allegations, therefore, there was no requirement of conducting of regular inquiry in the matter; that the required legal and codal formalities were complied in the inquiry against the appellant and the allegations against him stood proved; that after dismissal of departmental appeal of the appellant, he was required to have filed service appeal within 30 days but the appellant submitted Writ Petition in the august Peshawar High Court, Peshawar in the year 2017, which was though transmitted to this Tribunal for adjudication but the time spent in pursuing remedy before the august Peshawar High Court, Peshawar could not be excluded and the appeal in hand is thus badly time barred. He relied upon 2013 SCMR 911, 2010 SCMR 1982 and PLD 2016 Supreme Court 872.

5. We have already heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

6. A perusal of the record would show that the appellant was serving as Bailiff in District Courts Nowshera, when he made spot inspection upon order dated 24.04.2017 passed by the Civil Judge in Civil Suit titled "Shamsher Ali Versus Collector etc". The appellant visited the spot and submitted his report on 25.04.2017. Plaintiff of the concerned Civil Suit namely Shamsher Ali submitted a complaint to the District & Sessions Judge Nowshera, alleging therein that the appellant had received an amount of Rs. 600/- from him as court fee, while received an amount of Rs. 1000/- as bribe from Contractor

namely Sher Wali for the purpose of mentioning wrong Khasra Numbers in the report. The appellant submitted reply to the complaint and admitted the receiving of the above-mentioned amount. The appellant had admitted his guilt, therefore, there was no need for conducting of regular inquiry. The competent Authority, therefore, issued final show-cause notice to the appellant. In his reply to the show-cause notice, the appellant again admitted receiving of the amount. While going through the impugned order dated 06.06.2017 passed by the then District & Sessions Judge Nowshera, it is evident that the appellant was previously too proceeded against on similar nature allegations, however lenient view was taken and minor penalty of withholding of three annual increments was awarded to the appellant vide order dated 19.07.2016 by the then learned Senior Civil Judge Nowshera.


 7. The appellant was serving as Bailiff in District Court Nowshera and it appears that he had bonafidely filed Writ Petition in the august Peshawar High Court, Peshawar against the order passed in his departmental appeal, considering the filing of Writ Petition as an appropriate remedy. The departmental appeal of the appellant was rejected vide order dated 20.10.2017, which was challenged by the appellant through filing of Writ Petition on 09.11.2017 i.e within 30 days prescribed for filing of service appeal. The Writ Petition was not dismissed on the ground of jurisdiction, rather the same was transmitted to this Tribunal for its decision in accordance with law. In our humble view, time so spent in pursuing Writ Petition before august Peshawar High Court, Peshawar, could be excluded in given circumstances and the appeal is not hit by limitation. Besides that, worthy apex court has encouraged decisions of cases on merits by avoiding technical knockout on ground of limitation

8. The appellant was appointed in the year 1995, who was removed from service vide order dated 06.06.2017.

The appellant had a service of about 22 years at his credit, when he was removed from service vide order dated 06.06.2017. Keeping in view the length of service of the appellant, the penalty so awarded to him is quite harsh and safe administration of justice would justify the modification of the said major penalty.

9. In view of the above discussion, the appeal in hand is partially allowed and the major penalty of removal from service so awarded to the appellant is converted into compulsory retirement with effect from 06.06.2017. The intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.05.2022


(ROZINA REHMAN)
MEMBER (JUDICIAL)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
18.05.2022

Appellant alongwith his counsel namely Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially allowed and the major penalty of removal from service so awarded to the appellant is converted into compulsory retirement with effect from 06.06.2017. The intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.05.2022

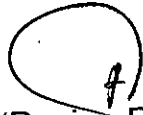

(Rozina Rehman)
Member (Judicial)


(Salah-Ud-Din)
Member (Judicial)

16.05.2022

Appellant alongwith his counsel present. Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Arguments heard. To come up for order on 18.05.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

Stipulated period passed reply not submitted.

15.09.2021

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


Chairman

01.12.2021

Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Abdul Mateen, Supdt for respondents present.

Written reply/comments on behalf of respondents have already been submitted through office which is placed on file. A copy of the same is also handed over to the learned counsel for the appellant. To come up for arguments on 24.02.2022 before D.B.


(MIAN MUHAMMAD)
MEMBER (E)

24-2-22

*Due to retirement of learned
Chairman, the case is adjourned to
16-5-22 for the same.*



15000/20

14.07.2021

Appellant with counsel present. Preliminary arguments heard.

Vide order dated 18.11.2020, in Writ Petition No. 4596-P/2017, the Honourable High Court treated the Writ Petition as Service appeal and sent to this Tribunal in original for disposal in accordance with law. Subject to all just and legal objections including limitation with reference to pursuing remedy before wrong forum, this appeal is admitted for 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 in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 01.12.2021 before the D.B.

Appellant Deposited
Security & Process Fee


14/7/21


Chairman

08.01.2021

Appellant is present alongwith his counsel Mr. Saadullah Khan Marwat, Advocate.

Learned counsel for appellant seeks time for preparation of the brief. Time is allowed. File to come up for preliminary hearing on 07.04.2021 before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

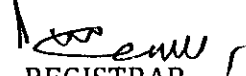

07.04.2021

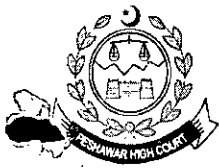
Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.07.2021 for the same as before.


READER

Form-A
FORM OF ORDER SHEET

Court of _____
Case No. 15000 /2020 _____

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	24/11/2020	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Peshawar and the Hon'ble High Court vide its order dated 18.11.2020 treated the Writ Petition into an appeal and sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution Register and put up to the worthy Chairman for further order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/01/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>



The
PESHAWAR HIGH COURT
Peshawar

Ph: No. 091-9210149-58

No. 29331/768/2020/WP-MN

Dated. 23-November-2020

From

Deputy Registrar (J),
Peshawar High Court,
Peshawar.

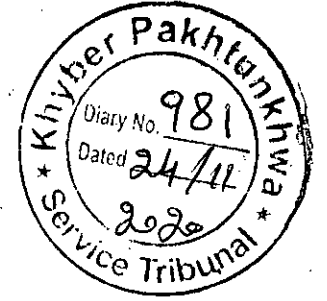
To

The Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Subject: Writ Petition No. 4596/2017 Title: Muhammad Kabir Shah VS District Judge, Nowshera and Others

Sir,

I am directed to send herewith the titled case in original alongwith all annexures & copy of order of this Honourable Court dated 18.11.2020 for compliance.





[Signature]
24-11-20
Deputy Registrar (J)

Encl: As above.

(5)

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET

Date of order.	Order or other proceedings with the order of the Judge
18.11.2020	<p><u>W.P.No.4596-P of 2017.</u></p> <p>Present: Mr.Saadullah Khan Marwat, advocate for the petitioner.</p> <p>Syed Qaisar Ali Shah, AAG for the Provincial Government.</p> <p>Mr.Khaled Rehman, advocate for the respondent No.2.</p> <p>-----</p> <p><u>LAL JAN KHATTAK, J.-</u> On second thought learned counsel for the petitioner stated at the bar that in view of the judgment reported in PLD 1994 SC 539 he would be satisfied if this petition is sent to the Khyber Pakhtunkhwa Services Tribunal, Peshawar for its disposal in accordance with law to which the latter got no objection.</p> <p>2. In view of the above, we send the instant petition to the Khyber Pakhtunkhwa Service Tribunal, Peshawar in original to be treated as appeal, which shall be decided according to law. Office shall retain photocopy of each such document for record.</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: right;"> JUDGE</p>

IN THE PESHAWAR HIGH COURT, PESHAWAR

S. APP. NO 15600/20

W.P No. 4596/2017

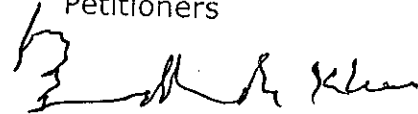
Muhammad Kabir Shah versus

District Judge & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Writ Petition		1-5
2.	Affidavit		6
3.	Address of Parties		7
4.	Civil Suit before SCJ dated 13-03-2007	"A"	8-9
5.	Application for inspection of spot, 24.04.17	"B"	10-11
6.	Report of petitioner dated 25-04-2017	"C"	12
7.	Complaint of Shamsher Ali dated 29-04-17	"D"	13-14
8.	Reply dated 06-05-2017	"E"	15-16
9.	Sub-sequent reply dated 22-05-2017	"F"	17-18
10.	Final Show Cause Notice dated 29-05-2017	"G"	19
11.	Reply to SCN dated 05-06-2017	"H"	20
12.	Affidavit of Shamsher Ali dated 05-06-2017	"I"	21
13.	Affidavit of Rasool Shah Witness, 08-06-17	"J"	22
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17.	AA Commissioner order to Patwari/Girdawar dated 18-10-2017	"N"	33
18.	Report of Patwari/Girdawar, dated 18-10-17	"O"	34-35
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20.	Notice		38
21.	Court Fee Rs. 500/-		39-40
22.	Wakalatnama		41

S. Khalid
Through
09/11/17

Petitioners

(Saadullah Khan Marwat)
Advocate
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.
Ph: 0300-5872676

FILED TODAY
Deputy Registrar

09 NOV 2017

Dated 08-11-2017

IN THE PESHAWAR HIGH COURT, PESHAWAR

S. A. 15000/200

W. P. No. 4596 / 2017

Muhammad Kabir Shah S/O Hakeem Shah,
R/O Tarkha, Nowshera, Ex. Bailiff, Office of
Senior Civil Judge, Nowshera Petitioner

VERSUS

1. District & Session Judge, Nowshera.
2. Registrar, Peshawar High Court, Peshawar.
3. Senior Civil Judge, Nowshera Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔=

Respectfully Sheweth:

1. That petitioner was appointed as Naib Qasid on 02-07-1995 and was posted as such in the Peshawar High Court, Peshawar. Later on was transferred to District Courts Nowshera. He was further promoted to the post of Bailiff.
2. That one Shamsheer Ali, resident of Aza Khel Payan filed Civil Suit before the court of R. No. 03 against the Collector & others for grant of decree, and to restrain the contractor from construction of BHU. Status quo was also maintained. (Copy as Annex "A")
3. That on 24-04-2017, Plaintiffs submitted application to the court for inspection of the disputed place through Bailiff. The said application was marked:-

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Deputy Registrar
09 NOV 2017

2.
"P.O.F. Notices to respondents. In the mean while
Bailliff to visit the spot and submit his report within
07 days.

Sd/PO
24-04-2017

(Copy as Annex "B")

4. That on 25-04-2017, petitioner submitted report to the court.
(Copy as Annex "C")
5. That on 29-04-2017, plaintiff Shamsheer Ali submitted complaint
before the court of District & Session Judge, Nowshera for
proceeding against petitioner for taking Rs. 600/- from him and
Rs. 1000/- from Contractor. (Copy as Annex "D")
6. That on 06-05-2017, petitioner submitted reply to the complaint
by denying the allegations, followed by subsequent reply dated 22-
05-2017, compelling him by District & Session Judge to admit the
allegations. Thereafter, he shall be exonerated from the charges.
(Copies as Annex "E" & "F")
7. That on 29-05-2017, petitioner was straight away served with
Final Show Cause Notice into the allegations without re-coursing to
Law; Rules and to conduct proper and regular enquiry in the
matter which was replied by the him on 05-06-2017 by denying
the allegations. (Copies as Annex "G" & "H")
8. That on the said date i.e. 05-06-2017, complainant submitted
affidavit before R. No. 01 that he has no grievance against
petitioner, followed by subsequent affidavit dated 08-06-2017 by
Mian Rasool Shah. (Copies as Annex "I" & "J")
9. That on 06-06-2017, R. No. 01 awarded major penalty under Rule
4-b (III) of KP, Government Servants (Efficiency and Discipline),
Rules, 2011 and was removed from service with immediate effect.
(Copy as Annex "K")

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Deputy Registrar

09 NOV 2017

Here it would be not out of place to mention that the enactment
under which petitioner was dealt with, does not apply to the case
in hand.

10. That on 21-06-2017, petitioner submitted departmental appeal before R. No. 02 for setting aside of the impugned order of R. No. 01 and to reinstate him in service with all back benefits having 22 years spotless service into his credit. (Copy as Annex "L")
11. That again on 13-10-2017, S.C.J (M Asim) directed Bailiff, Rawid Khan to inspect the disputed place of the parties along with Halqa Patwari to submit detail report to the Court on 23-10-2017. (Copy as Annex "M")
12. That Patwari, Amir Khan and Girdawar Amjad Ali was not accompanying the Bailiff to inspect the spot, so Additional Assistant Commissioner, Nowshera directed them on 18-10-2017 to do the needful. (Copy as Annex "N")
13. That on 18-10-2017, Bailiff Rawid Khan submitted report to the Court of S.C.J, Nowshera stating therein that construction work is not taking place in disputed Khasra No. 2666 but in other Khasras which report was also signed by Patwari and Girdawar of the Halqa. (Copy as Annex "O")
14. That the said departmental appeal came up for hearing on 20-10-2017 before R. No. 02 which was rejected / dismissed for no legal reason. (Copy as Annex "P" & "Q")

Hence this Writ Petition, Inter alia, on the following grounds:-

GROUND S:

- a. That petitioner was awarded with major punishment of Removal from service but no regular enquiry into the allegations, being mandatory was conducted.
- b. That on one hand, petitioner was served with Show Cause Notice by R. No. 01 while on the other hand, he himself imposed major penalty upon him. Thus he became prosecutor as well as judge of his own cause at one and the same time

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Deputy Registrar

09 NOV 2017

- c. That it was mandatory for R. No. 01 to appoint Inquiry Officer in the matter and to probe the same as per the mandate of Law but short-cut procedure was adopted which is in total dis-regard of Law & Rules.
- d. That in first reply to the complaint, petitioner denied the allegations but he was forced by R. No. 01 to admit his guilt and thereafter, he shall be exonerated from the charges but he resiled to honor his commitment.
- e. That when charge is denied, witness(s) were not examined in presence of accused, opportunity of cross examination was not afforded, enquiry report was not supplied to accused, then all such allegations and acts becomes null and void in the eyes of Law.
- f. That petitioner has 22 years' service in his credit but no benefit of the same was extended to him, so the whole family was deprived from his earnings.
- g. That when SCJ deputed Bailiff, Ravaid Khan, patwari Halqa, Amir Khan and Girdawar, Amjad Ali for inspection of the disputed place, they submit report to the court which supports the contention of petitioner that disputed Khasra was 2670 and not Khasra No. 2666, despite this fact too, petitioner was awarded major punishment.
- h. That appellate order is neither supported by reasons, nor is per the mandate of Law, Rules and record, so has no legal value.
- i. That the enactment does not apply to the case in hand.

It is, therefore, most humbly prayed that on acceptance of the Writ Petition, in exercise of the extraordinary constitutional jurisdiction, this hon'ble Court may graciously be pleased to:-

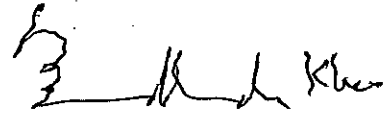
- a. Declare order dated 06-06-2017 and 20-10-2017 of the respondents to be illegal, improper, unjust, against the mandate of Law, Rules, without lawful authority and of no legal effect;

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 Deputy Registrar
 09 NOV 2017

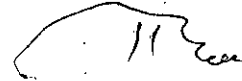
- 15
- b. Direct the authority to reinstate petitioner in service with all back benefits ; and/or
- c. Any other writ/order/direction deem proper and just in the circumstances of the case, be also issued/ordered/given.

Petitioner

Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal
Advocates

Dated 08-11-2017

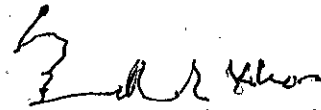
LIST OF BOOKS:

1. Constitution.
2. 2016 SCMR 1206
3. 2008 PLC (CS) 609

4. 2017 SCOR 864

CERTIFICATE:

Certified that as per instruction of petitioner, no such petition was filed before this Hon'ble court. (D.B Case)



Advocate

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Deputy Registrar
09 NOV 2017

IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ. Petition No. 4596 /2017

Muhammad Kabir Shah

versus

District Judge & Others

AFFIDAVIT

I, Muhammad Kabir Shah S/O Hakeem Shah, R/O Tarkha, Nowshera, do hereby solemnly affirm and declare that the contents of the **Writ Petition** are true and correct to the best of my knowledge and belief.

DEPONENT

CNIC #: 17201-8253190-9

Identified By:

Saadullah Khan
Advocate,

No. <u>9119</u>
Certified that the above was verified on solemnly affirmation before me in office, this <u>8th</u> day of <u>Nov</u> <u>17</u> by <u>M. Kabir Shah</u> s/o <u>Hakeem Shah</u> <u>Nowshera</u> who was identified by <u>Saadullah</u>
Who is personally known to me:
 Oath Commissioner Peshawar High Court, Peshawar.

FILED TODAY
Deputy Registrar

02 NOV 2017

IN THE PESHAWAR HIGH COURT, PESHAWARWrit Petition No. 4596/P/2017

Muhammad Kabir Shah

versus

District Judge & Others

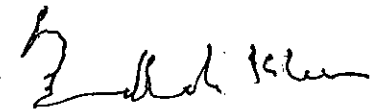
ADDRESSES OF THE PARTIES**PETITIONER:**

Muhammad Kabir Shah S/O Hakeem Shah,
R/O Tarkha, Nowshera, Ex. Bailiff, Office of
Senior Civil Judge, Nowshera

RESPONDENTS:

1. District & Session Judge, Nowshera.
2. Registrar, Peshawar High Court, Peshawar.
3. Senior Civil Judge, Nowshera

Through Petitioner



Saadullah Khan Marwat
Advocate

Dated: 08-11-2017

FILED TODAY

Deputy Registrar

09 NOV 2017

تقریر فی حق - محمد صالح - صاحب کتب

کہ اللہ تعالیٰ ہمیں سہولت عطا فرمائے۔ آمین

90/17

08 6/17

متر علی، ریاست علی، لیون سلمان، انجمن اسلامیہ، اراکین
خانوں کی دل رشتہ ان شریعی خان سلمان اراکین

نام
پہلے حصہ حصول راجحیت - صفحہ 2666

14 3/17

دوسرے حصہ (EXP) ڈائری جنرل قلم سیکرٹریٹ کے درجے پر
P (III) (III) - 2666

صوبہ سندھ کے ایس ایچ او کے درجے پر
ورثہ قرضہ تفصیل میں چھ مہینوں کے اندر
2666 نمبر 12-2011

9 11/17

Order No. 2666
Required

کہ راجحیت میں جو نام اور نمبروں کے ذریعے سے
کے حصہ پر فقیرانہ کے درجے میں
خود اعلان ہے، نیز حقوق باقاعدگی پر
یہ سیکرٹریٹ کے درجہ نمبر 2666 میں
بجائے جو اس کے درجہ نمبر 2666 میں

ATTESTED

Examiner
Branch, U.S.
27 OCT 2017

بابت پورے کارڈ میں 50% -
رہنوں زبرد صادر ہے -

مددات عذر کے لئے
بنا دینا چاہئے جس میں
رہنوں کے بارے میں

Handwritten signature

صاحب عالی! دعویٰ مدعیان حسب ذیل ہے

1:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 2:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 3:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 4:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔

5:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 6:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 7:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔

8:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 9:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔

10:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 11:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔

12:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 13:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔

14:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔
 15:- ایک دفعہ درمیان ملاقات فروری 2011-2012ء واقعہ صوبہ سندھ میں واقع تھا۔

Dt: 13/03/17

محمد سعید احمد صاحب مدعی

TESTED

Examiner Agency

7 OCT 2017

کندھاری
کندھاری پٹی

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B

گورنمنٹ ہسپتال - سول جج صاحب صاحب

سید علی محمد نام کے صاحبزادے

رہنے والے حکمران علی دادا صاحب

درخواست نمبر 1000/2017/17/17

Put up with file

Ejaz Ull Haq Awan
Civil Judge-II
Nowshera

صاحب کی درخواست نمبر 1000/2017/17/17

جو میں آئندہ تاریخ 16/3/17 کو رٹوں سے

تعمیرات صورت میں 1000/2017/17/17 سے
کو خارج کرنا ہے، جس کی درخواست نمبر 1000/2017/17/17

تعمیرات نمبر 1000/2017/17/17 سے

تعمیرات نمبر 1000/2017/17/17 سے

کوئی کارڈ فراہم نہیں ہے،

تعمیرات نمبر 1000/2017/17/17 سے

تعمیرات نمبر 1000/2017/17/17 سے

Notice to Respondent
In the memorandum
submitted by the
applicant to visit the
site and submit
his report within
07 days

24-4-17

Ejaz Ull Haq Awan
Civil Judge-II
Nowshera

پس اس کے بعد، اس کے بعد

تعمیرات نمبر 1000/2017/17/17 سے

24/4/17

ATTESTED

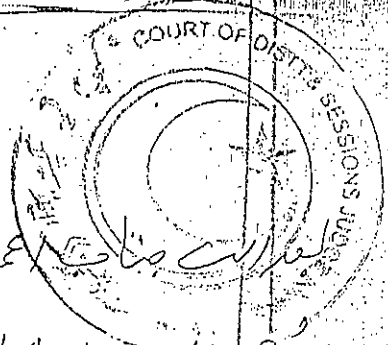
Examiner of Court
Nowshera

27 OCT 2017

M. IFTAKHAR
Advocate
Distt & Session Courts
Nowshera



24/4/17



صوبہ صلا فظم

تاریخ

کلیڈر اب جناح اعجاز الحق امدون سول جج ہا II ٹو سیکشن

شمس علی، اربنا ذیل اسپران، صماتان زیتون لولہ، میرا فزوزہ بیگم
خاتون لولہ و خیران شیر علی خان ساکنان رضافیل بیان ٹو سیکشن

(مردمان) نب

ٹو سیکشن صوبہ صلا فظم

1 کلکٹ صوبہ صول لراضیات ضلع ٹو سیکشن

3 CNW XEN ٹو سیکشن

(مردمان)

24-4-17

نور علی بیگ امدون

مقررہ مندرجہ عنوان بالا میں در بیان ہے ایک در خواستہ عدالت صلا فظم
گزارا ہے۔ جسکی نقل میرا ہاتھ ہے۔ لہذا حکم میں کہ میرا علم بالان
تعمیل صلا فظم 16/17 کلکٹ لکرا جاے۔ نیز بیگ عدالت صلا فظم
حاکم مقررہ صلا فظم میں بعد تفصیلی رپورٹ سات دن کے اندر
مدت صلا فظم میں نظر کریں۔

ATTESTED

Examined & Found Correct
Notary Public
Nowshera

Ejaz Ul Haq Awan
Civil Judge-II
Nowshera

S. No. 2874
Galliff / P.S. [Signature]



N. Nazir Kowshera

Attest

[Signature]

27 OCT 2017

6/5/17

کبیر شاہ بیلغ



13

عدالت جناب ڈسٹرکٹ اینڈ سیشن جج صاحب نوشہرہ۔

درخواست برادقانونی کارروائی کرنے برخلاف محمد کبیر شاہ بیلغ عدالت ڈسٹرکٹ کورٹس نوشہرہ۔

جناب عالی!

سائل حسب ذیل عرض کرتا ہے۔

۱- یہ کہ مقدمہ بعنوان "ششیر علی بنام C&W" عدالت جناب سول جج اعجاز الحق صاحب زیر تجویز ہے۔ جس میں آئندہ تاریخ پیشی مورخہ 16-05-2017 مقرر ہے۔

۲- یہ کہ مقدمہ عنوان بالا میں مسؤل علیہ موقع پر کام کر رہا تھا جس بابت عدالت سول جج صاحب نے مذکورہ بیانیہ کو موقع ملاحظہ کرنے کے لئے سائل کے ساتھ بھیج دیا۔

۳- یہ کہ مذکورہ بیانیہ نے سائل سے مبلغ 600/- روپے لئے اور سائل نے جب پوچھا کہ یہ پیسے کس چیز کے ہے تو بیانیہ نے بتایا کہ یہ کورٹ فیس کے پیسے ہے جو کہ میں کورٹ میں جمع کرونگا۔

۴- یہ کہ موقع پر جانے کے بعد جب بیانیہ وہاں پر موجود ٹھیکدار شیر ولی سے ملا تو بیانیہ نے اس سے مبلغ 1000/- روپے بطور رشوت لئے۔ تاکہ رپورٹ میں غلط خسرو نمبرات کو درج کیا جا سکے۔

۵- یہ کہ بیانیہ عدالت نے اپنے رپورٹ میں خسرو نمبرات 2670, 2632 درج کیا ہے۔ جبکہ متنازعہ خسرو نمبر 2666 ہے۔ اور کام بھی خسرو نمبر 2666 میں ہو رہا تھا اور عدالت نے بیانیہ کو خسرو نمبر 2666 میں رپورٹ دینے کا حکم دیا تھا۔

(نقل لف ہے)

۶- یہ کہ خسرو نمبرات درج کرنا بیانیہ کا کام نہیں بلکہ یہ تو پنوار کی کام ہے۔ لیکن بیانیہ نے ٹھیکدار سے پیسے لیکر ایک غلط رپورٹ عدالت حضور میں جمع کیا ہے۔ اور اسی طرح نہ صرف عدالت کو دیکھو کہ دیا ہے بلکہ سائل کو بھی لاطمانی نقصان پہنچایا ہے۔

ATTESTED

Attest
[Signature]



۷۔ یہ کہ مسیان ولی اللہ ولد ہدایت، اکرم خان ولد تجمل شاہ شناختی کارڈ نمبر 5-17201-9211522 ساکنان اضاحیل پایان ضلع نوشہرہ اس بات کے گواہان ہیں کہ مذکورہ بیلف نے ٹھیکیدار سے پیسے بطور رشوت وصول کئے ہیں۔

۸۔ یہ کہ بیلف عدالت نے اپنے ڈیوٹی اور اختیارات کا غلط استعمال کیا ہے۔ اور مقدس عدالت کے ساتھ کونقصان پہنچایا ہے۔ اسلئے بیلف کے خلاف سخت کارروائی کرنا تقاضا قانون و انصاف ہے۔

لہذا آپ صاحبان سے استدعا ہے کہ بیلف عدالت محمد کبیر شاہ کے خلاف قانونی کارروائی کی جائے تاکہ مسائل کے ساتھ انصاف ہو سکے۔

ما رض

مشیر علی خان ولد شیر علی سکنہ محلہ ظریف خیل، اضاحیل پایان، تحصیل و ضلع نوشہرہ۔

موبائل نمبر 0335-5201781

مورخہ 29-04-2017

ATTESTED
08 JUN 2017
Examiner Copying Agency
Branch. D.S.J. Nowshera

Attest
[Signature]



اس کی توثیق کے لئے یہاں سے جاری کیا گیا ہے



صدر مانت درخواست

۱۶ - ۱۱ - ۰۶

۱-۲
مگر اس میں کچھ اور ایسی چیزیں بھی شامل ہیں جو کہ مندرجہ ذیل سے متعلق ہیں اور ان کی توثیق کے لئے یہاں سے جاری کیا گیا ہے

۳
من درج ذیل کے مقدمے متعلق ایسی چیزیں بھی شامل ہیں جن کا مندرجہ ذیل سے متعلق ہے اور ان کی توثیق کے لئے یہاں سے جاری کیا گیا ہے

Sessions Judge
Nowshera.
06/11/06

۴
من درج ذیل کے مقدمے متعلق ایسی چیزیں بھی شامل ہیں جن کا مندرجہ ذیل سے متعلق ہے اور ان کی توثیق کے لئے یہاں سے جاری کیا گیا ہے

۵
من درج ذیل کے مقدمے متعلق ایسی چیزیں بھی شامل ہیں جن کا مندرجہ ذیل سے متعلق ہے اور ان کی توثیق کے لئے یہاں سے جاری کیا گیا ہے

۶
من درج ذیل کے مقدمے متعلق ایسی چیزیں بھی شامل ہیں جن کا مندرجہ ذیل سے متعلق ہے اور ان کی توثیق کے لئے یہاں سے جاری کیا گیا ہے

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۳) لوہار جو بیع ملاحظہ ہو، نے ایسا بیوروٹ فرسٹ کیا اور وہ ایس عالی ہو گیا۔

۴) والی پر سائل۔ بندہ سے ثابت کیا کہ وہ اپنی بیوی جس پر بیعت بندہ نے سائل
کو دینے اور بیوروٹ اور بیوروٹ کے باعث بیلا جس پر سائل نے بندہ پر دباؤ ڈال
کر اپنی بیوی کو بیوروٹ ماننے کو کہا لیکن بندہ انکار کیا اور بیوروٹ بندہ
سے جو بیوروٹ بیلا کی ہے وہاں حقیقت یہ ہے کہ اور اس میں کسی کی فرسٹ سے
از بیع میں کر لیا جس پر سائل نے بیانی عقیدہ اور اسے ہر قسم سے
اور بندہ کو سائلین نتائج کی دیکھیں وہی

۵) اس وقت تک کہ میں اس میں برتتاؤں گئے تمام الزامات ملو اور سے بیوروٹ میں
جو کہ سائل کی منشاء بیوروٹ سے ہو کر ہے پر بندہ برتتاؤں گئے ہیں

۶) میں اس میں اچھا جذبہ دیکھتا ہوں اور حقائق پر فرسٹ ہے

الہ

۰۶/۱۷

محمد کبیر شاہ بیلا عالی فرسٹ

ATTESTED

08 JUN 2017

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Branch, D.S.J. Nowshera.

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محکمہ عدالت پنجاب ڈسٹرکٹ اینڈ سیشن جج ہواہن کوٹلی

بنام کبیر شاہ (بیگ)



District Judge
Nowshera

27/1/17

جواب عالی

جواب درخواست منجانب کبیر شاہ (بیگ)

جواب درخواست منجانب کبیر شاہ (بیگ) جس میں ہے۔

یہ کہ درخواست عدالت حضور میں آج تک زیر تھوڑی ہے۔

یہ کہ شکریہ کا مقدمہ عدالت حضور میں اعجاز الحق اٹوان

کی عدالت میں زیر تھوڑی ہے۔

یہ کہ صدر منڈیا میں عدالت حضور نے عارضی قلم استغایٰ جی ٹی ٹی ٹی

کی ہے۔ بعد از وہ عمل قلم استغایٰ آرڈر میں بیگ مستعدوں کے

تہ بچیم عدالت صاف کیا گیا۔ اور عدالتی عملوں کو صاف کرنے

موقعہ میں کام بند ہو گیا

یہ کہ میرا عدالت کے رول میں سے ایک رول ہے جس میں 20 سال

پہلے اور ایک سال سے اسے ڈالنے سے اس میں دیکھا گیا

یہ کہ شکریہ درخواست میں 15/1/17 کا ڈکریٹ ہے۔ جو کہ کچھ

تعمیرات کے لیے ہے۔ میں ان کے لیے ڈکریٹ کے ذریعہ لیا گیا ہے

میں ان کے طریق سے جو میں نے دیکھا ہے۔ میں نے ان میں سے

کچھ میں نے دیکھا ہے۔ میں نے ان کے لیے ڈکریٹ کے ذریعہ لیا گیا ہے

یہ کہ آج عدالت حضور میں شکریہ کی طرف سے جو کہ

لکھا گیا ہے۔ اس کو میں نے دیکھا ہے اور نہ وہ ہے

میں نے موقعہ میں موجود تھا۔

یہ کہ میں نے اس سے اوپر عدالت ہر طرف قرآن شہادتی بیان کرنا ہے۔

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JUN 2017
Examiner Copying Agency
Branch, U.S.J. Nowshera

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آپے خود موقع چھوڑ کر نہ جائیں

یہ کہ میں بھی عدالت حضور صلی اللہ علیہ وسلم کے لئے تیار ہوں
انتر رسا بابت آپ عدالت حضور صلی اللہ علیہ وسلم کو لے کر آئے گا۔
تو عدالت میں عدالت حضور صلی اللہ علیہ وسلم پر قیامت کا۔

اس سید عابدی نے
درخواست سائل فارم نمبر ۱/۱۱/۱۱
واحد

کسپر شاہ در بیلغ
کسپر شاہ در بیلغ
کسپر شاہ در بیلغ
کسپر شاہ در بیلغ
22/5/17

ATTESTED
08 JUN 2017
Examiner Copying Agency
Branch. D.S.J. Wawshera

Page 1
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(14)

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IN THE COURT OF MR. SHAFIQ AHMAD TANOLI, DISTRICT &
SESSIONS JUDGE, NOWSHERA

FINAL SHOW CAUSE NOTICE

To: -


Mr. Kabir Shah, Bailiff, District Courts,
Nowshera

Whereas, you demanded and received Rs.600/- from complainant Shamsher Ali as court fee and similarly also received Rs.1000/- from his opponent Sher Wali in civil suit titled "Shamsher Ali vs. C&W" pending in the court of learned CJ-II, Nowshera and in this respect the complainant Shamsher Ali filed a complaint **against** you before this court and in reply of the said complaint **you have** admitted the receipt of Rs.600/- from complainant and **Rs, 1000/-** from his opponent, orally and in writing.

Therefore, now through this final notice you are directed to show cause **as** to why not penalty under Rule 4 b (iii) of KPK Government **Servants** (Efficiency & Discipline) Rules, 2011 be imposed upon **you**.

Your **reply should** reach to the undersigned within a week, upon **receipt** of this notice.

Given under my hand and seal of this Court this
29th Day of May, 2017.


Shafiq Ahmad Tanoli,
District & Sessions Judge,
Nowshera.

Attest



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بعدالت جناب ڈسٹرکٹ جج صاحب نوشہرہ۔

فائل شوکا زونٹس



عدالت جوائنٹ ٹریس منجانب کبیر شاہ پبلک ڈسٹرکٹ کورٹس نوشہرہ۔

جناب عالی! جواب درج ذیل عرض ہے۔

عرض ہے کہ موقع ملاحظہ کے لئے سن سائل چلا گیا تھا۔ چونکہ موقع کافی دور ہے اور مدعی بیانی ہوا کہ چونکہ میں موقع پر نہ جاسکتا ہوں۔ اسی وجہ سے مدعی نے ٹیکسی کرایہ پر دیا۔ اور مبلغ 600/- روپے بطور کرایہ ٹیکسی دیا۔ سن سائل نے ایسا کوئی مطالبہ بابت رقم ازاں مدعی نہ کیا ہے۔ کمپلیٹ منجانب مدعی بنی بر جھوٹ اور دروغ گوئی ہے۔ نیز بعد از تیسل اور رپورٹ جو کہ میں نے موقع پر تیار کیا۔ اور مدعا علیہم کی تیسل کیا۔ واپسی پر کام ختم کرنے کے بعد اور رپورٹ مرتب کرنے کے بعد مذکورہ شیردلی ٹھیکیدار نے مبلغ 1 ہزار روپے بزور میرے جیب میں ڈالے جو کہ میں نے واپس کئے۔ اور 4/5 مرتبہ میں نے واپس کئے لیکن مذکورہ شیردلی ٹھیکیدار نے بزور واپس کئے اور آخر پیسے میرے جیب میں بزور ڈال کر چھوڑ دیئے اور چلا گیا۔

Be placed on file

Sessions Judge
Nowshera.

05/6/2017

جناب عالی! سن سائل عرصہ تقریباً 20/22 سال سے ملازمت کرتا ہوں اور اپنی ڈیوٹی ایمانداری سے سرانجام دیتا ہوں۔ کبھی کوئی رشوت یا غیر قانونی کام نہ کیا ہے۔ اور مذکورہ کمپلیٹ بھی بنی بر جھوٹ اور دروغ گوئی ہے۔ بدیں وجہ خارج فرمائی جاوے۔ نیز چونکہ سن سائل نے کوئی جرم نہ کیا ہے اور نہ ہی کوئی غیر قانونی کام کیا ہے۔ بدیں وجہ سن سائل کے خلاف کوئی ایکشن نہ لیا جائے۔ اور کوئی جرم عائد کیا جائے۔

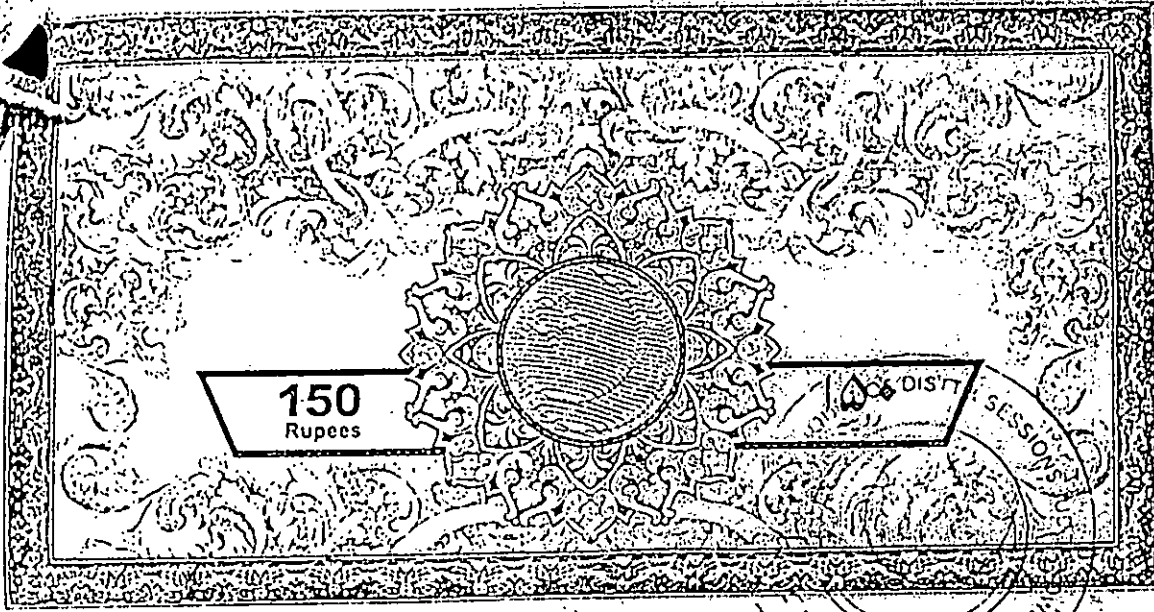
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08 JUN 2017
Fingerprinting Agency
Branch, D.S.J. Nowshera

عارض

کبیر شاہ پبلک ڈسٹرکٹ کورٹس نوشہرہ۔

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بیان حلفی

مکہ مسی ششیر علی خان ولد شیری علی مکہ محلہ ظریف خیل انسا خیل پایان تحصیل ضلع نوشہرہ کارہائشی ہوں خلفاً بیان کرتا ہوں کہ میں مقرر نے مسی کبیر شاہ بیلف ڈسٹرکٹ کورٹس نوشہرہ کے خلاف ڈسٹرکٹ جج کی عدالت میں درخواست گزار کی ہے۔ یہ کہ اب میں مقرر نے مسی کبیر شاہ کی فی سبیل اللہ معاف کر دیا ہے۔ اور مزید مسی کبیر شاہ کے خلاف کوئی دعویداری نہیں کرنا چاہتا۔ یہ کہ اگر عدالت جناب مسی کبیر شاہ کا فائل شوکا ز نوٹس منسوخ کرنے اور نوکری پر بحال کرے تو میں مقرر کو کوئی عذر یا اعتراض نہیں ہوگا۔ یہ کہ دونوں فریقین نے فی سبیل اللہ ایک دوسرے کو معاف کر دیا ہے۔ اور مستقبل میں ایک دوسرے کو کوئی ضرر یا نقصان نہیں پہنچائے گے۔ بیان حلفی رو برو گواہان لکھ دی تاکہ سند رہے اور ہوت ضرورت کام آدے۔

Be pleased to file

5-6-17

مکہ مسی ششیر علی

مکہ مسی ششیر علی خان ولد شیری علی مکہ محلہ ظریف خیل انسا خیل پایان تحصیل ضلع نوشہرہ۔

شناختی کارڈ نمبر 1-174071-22701

ATTESTED

08 JUN 2017

Examiner/Notary Agency
Branch, D.S.J. Nowshera

گواہان فاضل شاہ ولد ششیر شاہ انسا خیل پایان ضلع نوشہرہ۔ 5-6-17 17201-7685451-5

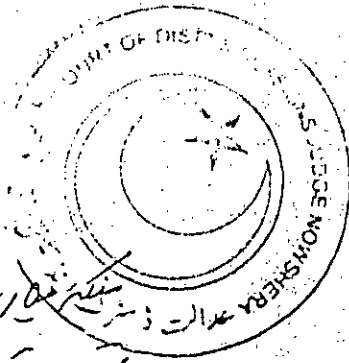
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بیان حلف



میں نے رسول شاہ ولد مقدر شاہ سکندراہا ضلع بیان
 کسبِ قلم تو بہتر حلفاً بیان کرتا ہوں۔ کہ بوقت
 تکمیل میں موقع پر موجود تھا۔ موقع پر جملہ کاروائی
 مکمل کرنے کے بعد سینف کبیر شاہ نے کاروائی مکمل کی
 اور جمع کاروائی میرے رویہ پر ہوئی ہے۔ سینف کبیر شاہ
 نے نہ تو رقعہ کا مطالبہ کیا تھا۔ اور نہ ہی مانگا تھا۔
 بلکہ بیرونی تھیلڈار نے بزور سینف کبیر شاہ کو مبلغ ۱۰۰ روپے
 دے دیے۔ جو کہ کبیر شاہ مسلسل واپس کر رہا تھا۔ اور اپنے
 سے لگا رہا تھا۔ لیکن بیرونی تھیلڈار نے کہا کہ جو رقم آپ
 چاہا ہے میرا ہے۔ اور یہ میری طرف سے
 جاری ہوئی ہے۔ میری وجہ رقعہ کبیر شاہ سینف کے
 قبضہ میں بزور ڈال کر وہاں سے چلا گیا۔ اس
 موقع پر اکرم خان ولد نچھل شاہ موجود نہ تھا۔
 ہیں بیان میں عدالت میں پیش ہو رہے ہیں۔ یہ بیان تیار ہوا۔

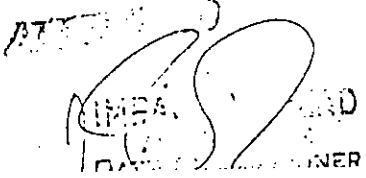
رسول شاہ

بیان رسول شاہ ولد مقدر شاہ

CNIC: 17201-2275875-5

رسول شاہ

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 Branch: D.S.J. Nowshera



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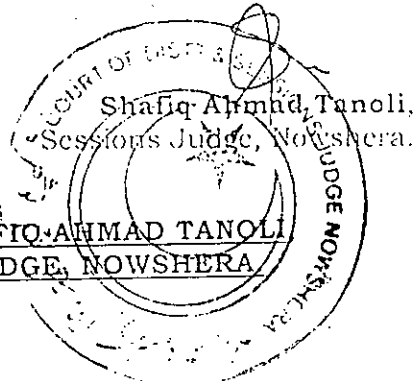
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ORDER-05
29.05.2017.

Complainant present in person. Respondent Kabir Shah ^{present}, but since he has admitted before this court, orally and in writing, the receipt of Rs.600/- from complainant and Rs.1000/- from his opponent, therefore, he be served with final show cause notice with the direction to submit reply to the notice within seven days positively. To come up for reply on

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29/5/17

6/6/17



IN THE COURT OF MR. SHAFIQ AHMAD TANOLI
DISTRICT & SESSIONS JUDGE, NOWSHERA

ORDER
06.06.2017

Accused/~~official~~ present in person. Reply to the final show cause notice has already been submitted.

Facts of the case are that on 02.05.2017 one Shamshir Ali Khan s/o Sher Ali r/o Mohallah Zarif Khel Azakhel Payan Tehsil and District Nowshera, has filed the complaint in hand against the accused/official Kabir Shah to the effect that a civil case titled "Shamshir Ali vs. C&W" is pending in the court of learned CJ-II, Nowshera, and the learned trial court directed the Bailiff /accused-official to visit the spot check as to whether the defendant has carried out the construction work or otherwise. That the accused/official has demanded Rs.600/- from the complainant as court fee, which the complainant paid to him. That when the accused/official

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08 JUN 2017
Fingerprinting Agency
District Nowshera

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reached the spot, he also received Rs.1000/- from his opponent i.e. contractor Sher Wali in presence of witnesses namely Waliullah s/o Hidayat and Akram Khan s/o Tajamul Shah and mentioned wrong khasra numbers in his report. He requested for taking legal action against the accused/official.

Accused/official was summoned, who appeared and was directed to submit reply/comments, which he submitted accordingly, wherein he has admitted that he had received Rs.500/- from complainant in respect of rent. For the second allegation i.e. receiving of Rs.1000/- from the opponent of complainant, the complainant was directed to produce witnesses before the court. On 22.05.2017 the complainant produced one Akram Khan as witness before the court, who stated before the court that he was present when Sher Wali, the opponent of complainant, gave money to accused/official Kabir Shah and in this respect he submitted his statement in written form duly attested by Oath Commissioner. Similarly, the accused/official has admitted that the said Sher Wali has given Rs.1000/- to him with his own sweet will and he has received Rs.600/- from complainant as rent/fare. He also submitted reply in this respect. As the accused/official has admitted the receipt of above mentioned amount from both the parties, therefore, there is no need for conducting any inquiry, hence, on 29.05.2017 he was served with final show cause notice and on 05.06.2017 he has submitted reply to the said notice, wherein he has also admitted the receipt of above mentioned amount from both the parties.

On 05.06.2017 complainant Shamsher Ali appeared before the court and submitted an affidavit and stated at the bar that the accused/official has compelled him through various

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Jirgas etc and he has pardoned him and has expressed his no objection on filing of the present complaint/petition without further proceeding. Once, the complainant had brought into the notice of the authority/court regarding the corrupt practice of the accused/official and the accused/official has also admitted the same, then the complainant has no right to withdraw the petition.

Previously, on 19.07.2016 the learned SCJ, Nowshera has imposed the minor penalty of withholding annual increment for three years on the accused/official and before the completion of one year of the said order the accused/official has repeated the said act.

Being dissatisfied from the reply of accused/official and keeping in view the above mentioned facts and circumstance coupled with the statements recorded by complainant and PW Akram as well as of accused/official, the accused/official is found guilty for the above mentioned offence, therefore, he is awarded major penalty under Rule 4 b (iii) of KPK Government Servants (Efficiency & Discipline) Rules, 2011 and he is removed from his services with immediate effect.

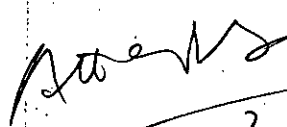
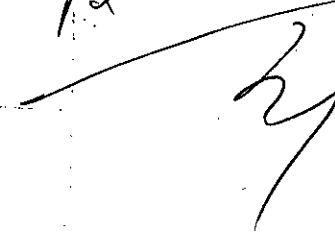
File be consigned to record room after its necessary completion and compilation

Announced.
06.06.2017.


Shafiq Ahmad Tanoli,
District & Sessions Judge,
Nowshera.

ATTESTED
08 JUN 2017

Examination Agency
Branch, D.S.J. Nowshera


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26 21-6-17

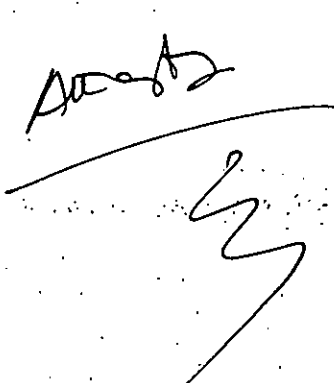
BEFORE THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR.

DEPARTMENTAL APPEAL / REPRESENTATION
AGAINST THE ORDER DATED 06/06/2017
PASSED BY THE LEARNED DISTRICT AND
SESSIONS JUDGE, NOWSHERA, VIDE WHICH
THE APPELLANT WAS REMOVED FROM
SERVICE.

Respectfully Sheweth:

1. That the appellant is a permanent resident of District Nowshera and is/was a bonafide member of District Judiciary, District Nowshera.

2. That the appellant had served District Judiciary as a Bailiff for about 22 years and during which he has given maximum output to his parent department in lieu thereof occasionally given pat on the back by his superior, but unfortunately a complaint in respect of illegal gratification was filed on 02/05/2017 before the learned District and Sessions Judge, Nowshera. (Copy of complaint is attached as annexure "A").



3. That the appellant submitted the reply/ written statement initially on 06/05/2017 and then on 25/05/2017 respectively. (Copies of written reply are attached as annexure "B").
4. That the compliant pardoned the appellant in the name of Almighty ALLAH through an affidavit submitted before the Trial Court on 05/06/2017, moreover, one eye witness of the alleged occurrence also submitted an affidavit regarding the innocence of the appellant, but the same were not considered by the learned trial Court. (Copies of affidavits are attached as annexure "C").
5. That the learned trial Judge removed the appellant from his service under (Efficiency and Disciplinary Rules 2011) vide order dated 06/06/2017 without conducting proper inquiry in proper manner. (Copy of order dated 06/06/2017 is attached as annexure "D").

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6. That the appellant seeks Benevolent Indulgence of your office to give sympathetic hearing to few following points/ grounds as under:

GROUND:

A. That the order dated 06/06/2017 passed by the learned District and Sessions Judge, Nowshera (hereinafter impugned) is patently illegal, unlawful, of no legal effect, against the existing law, rules and regulation governing the subject matter, hence liable to be set aside and the appellant may kindly be allowed to carry on his duties with all back benefits.

B. That the impugned is outcome of hastily given. The condition precedent and procedural safeguard provided under the law insure rule of law having been thrown to the wolves, hence the impugned order is not sustainable in the eyes of law, thus liable to be set aside.

C. That the innocence of the appellant is even established from the reply/ written statement

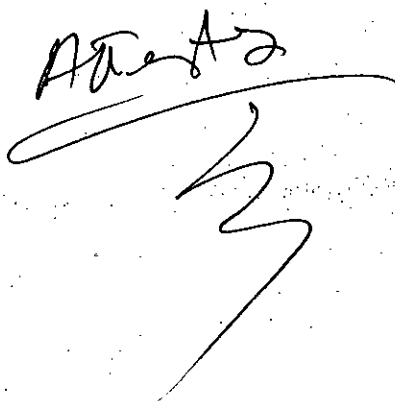
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submitted by the appellant being the Senior Most Employee/ Servant further shows the clean hands of the appellant before the trial Court.

D. That once the complainant pardoned the appellant in the name of Almighty ALLAH, then despite the fact of length of service of the appellant, the learned Trial Judge awarded the major penalty of removal from service without conducting proper inquiry in proper manner, hence needs consideration.

E. That under the Efficiency and Disciplinary Rules, 2011, four major penalties (i). Reeducation to a Lower Post or Pay scale or to a lower stage in a time scale. (ii). Compulsory Retirement. (iii). Removal from Service. (iv). Dismissal from Service, but in the present case the appellant was penalized with the removal from service, hence the imposition of quantum of sentence also needs and invites consideration of your Honour.

F. That during the entire service of the appellant he has not given any occasion to his superior to raise their eyebrows regarding his conduct, but was

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occasionally awarded pat of the back for his meritorious service.

G. That the appellant has got no alternate source of income to feed mouths of members of his entire poor family, hence living miserable life from hands to mouth.

H. That the appellant is of the view that not only he but his entire family life to the last drop, if the impugned order is not withdrawn/ set aside and the appellant would be considering himself lucky and would find peace, if may allowed to continue his service.

I. That the appellant ensure to abide by all relevant rules and regulations applicable for the said purposes.

J. That as per the Superior Courts law on equality and other procedural safeguard, the impugned order has overlooked and ignored some important wisdom spewing guidelines/ points in the reported judgments as under:

AD-AS


2016 PLC (CS) Page 1170

2009 SCMR Page 281

1997 PLC (CS) Page 449

K. That any other ground which has not been mentioned may also be permitted to raise at the time of hearing.

It is therefore, respectfully submitted that in the context of the appeal in hand, the impugned order dated 06/06/2017 passed by the learned District & Sessions Judge, Nowshera may graciously be withdrawn/ set aside and the appellant may kindly be allowed to carry on unhindered his duties with all back benefits.

Appellant
Muhammad Kabir Shah
Ex-Bailiff
District Courts, Nowshera.

Through

Dated: 21/06/2017

Muhammad Arif Jan
Advocate High Court,
Peshawar.
Cell No. 0333-2212213.

Arif Jan

دو کتب صورتی ملاقات

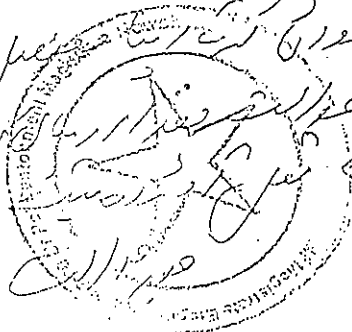
کتابت فیہ - کتب عام - کتب شریعتی

بیشتر کتب میں (نہ) ملے
شمسی 10/12 20

لذاتکے نام سے
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SENIOR CIVIL JUDGES
Judicial Magistrate
Empowered U/S 30 C.P.C.
Nowshera

ATTACHED
Examiner, Printing Agency
Branch, District, Nowshera
10.7.2017

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18-10-17

Patwan Ajakhel Payan / Girdawar concerned

Relevant record in the Subject Case should be furnished before Court concerned on next date of hearing.

In case of failure, whole responsibilities will lie upon Girdawar circle concerned and patwan mouza concerned.

[Signature]
18.10.17

Addl. Asstt. Commissioner
Nowshera

Attested
[Signature]

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18-10-17

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صاف

صداقتی سندس نڈہ سہ ماہ پندرہویں الفو اردو آدرس کل

اردو نڈہ سہ ماہ پندرہویں الفو اردو آدرس کل

کا ملاقاتی کنگ سہ ماہ پندرہویں الفو اردو آدرس کل

سہ ماہ پندرہویں الفو اردو آدرس کل

نمبر 2666 میں نہیں صدارت کے بلکہ درج ذیل صندھ 2666 میں

ذکورہ الفو اردو آدرس کل کا نئی سہ ماہ پندرہویں

سہ ماہ پندرہویں الفو اردو آدرس کل

روشنی خان بیلہ
18/10/17

بین گاہوں کے لئے صندھ 1
کلیئر شدہ

روشنی خان بیلہ
18/10/17

ATTESTED
Branch - D.S.J. Nazimabad

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27 OCT 2017

P 36

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

Departmental Appeal No. 32/2017

JUDGMENT.

Date of hearing: 20.10.2017.

Appellant: Muhammad Kabir Shah By Mr. Doif Jan Advocate

Respondent: By Mr. Abdul Maseen Superintendent.

WAQAR AHMAD SETH, J:- This departmental appeal is directed against the order dated 6.6.2017 of learned District & Sessions Judge, Nowshera, whereby the appellant was removed from service.

2. Arguments heard and record perused.

3. Perusal of the record would reveal that on 2.5.2017, Shamshir Ali Khan son of Sher Ali has filed a complaint before the learned District & Sessions Judge, Nowshera against the appellant stating therein that a civil case titled "Shamshir Ali vs. C&W" is pending in the Court of learned Civil Judge-II, Nowshera, who directed the appellant being serving as Bailiff to visit the spot and check as to whether the defendant/C&W department has carried out the construction work or otherwise. For this purpose, the appellant has demanded Rs. 600/- as rent, which he paid to him, however, when the appellant reached the spot, he also received

M. S. Seth

Doif Jan

Rs. 1000/- from his opponent i.e. contractor Sher Wali in the presence of Waliullah son of Hidayat and Akram Khan son of Tajamul Shah by mentioning wrong ~~khara~~ numbers in his report. The appellant was summoned, ~~who appeared~~ before the learned Sessions Judge, Nowshera and submitted his reply wherein he has admitted the receipt of above said amount; hence, without conducting any inquiry, which was not needed as the appellant confessed his guilt, he was served with a final show cause. The appellant submitted his reply to the final show cause notice and again admitted the receipt of amount; hence, he was removed from service and rightly so.

4. Learned counsel for the appellant argued the case at length but could not make out a case for interference in the well reasoned order of learned District & Sessions Judge, Nowshera. Resultantly, this departmental appeal being without any merit is hereby dismissed.

Departmental Appeal CMA-5

ANNOUNCED.
Dated: 20.10.2017

No. 12509
Date of Present. 06/11/17
No of I. 30
Com. [Signature]
Urgent [Signature]
Total [Signature]
Date 06/11/17
Date 06/11/17
Nawab Shah PS

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 177 of
The Qanun-e-Shahadat Order 1984
06 NOV 2017

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IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. _____/2017.

Muhammad Kabir Shah

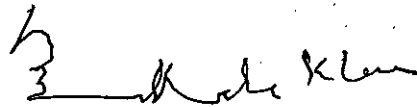
versus

District Judge & Others

NOTICE

1. District & Session Judge, Nowshera.
2. Registrar, Peshawar High Court, Peshawar.
3. Senior Civil Judge, Nowshera.

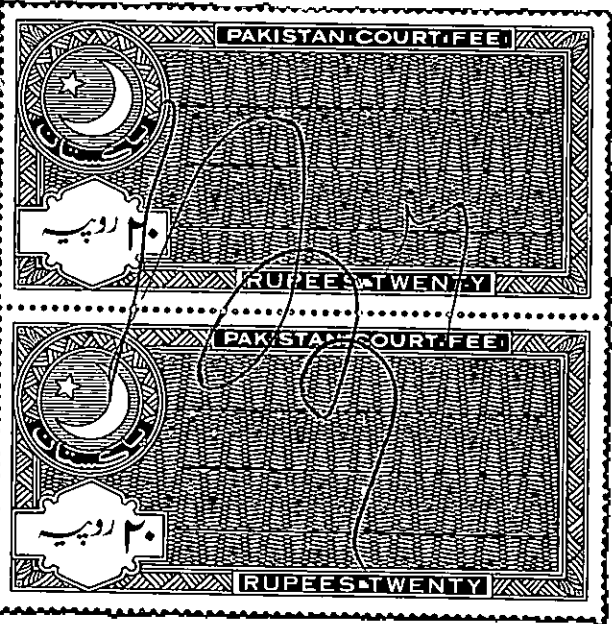
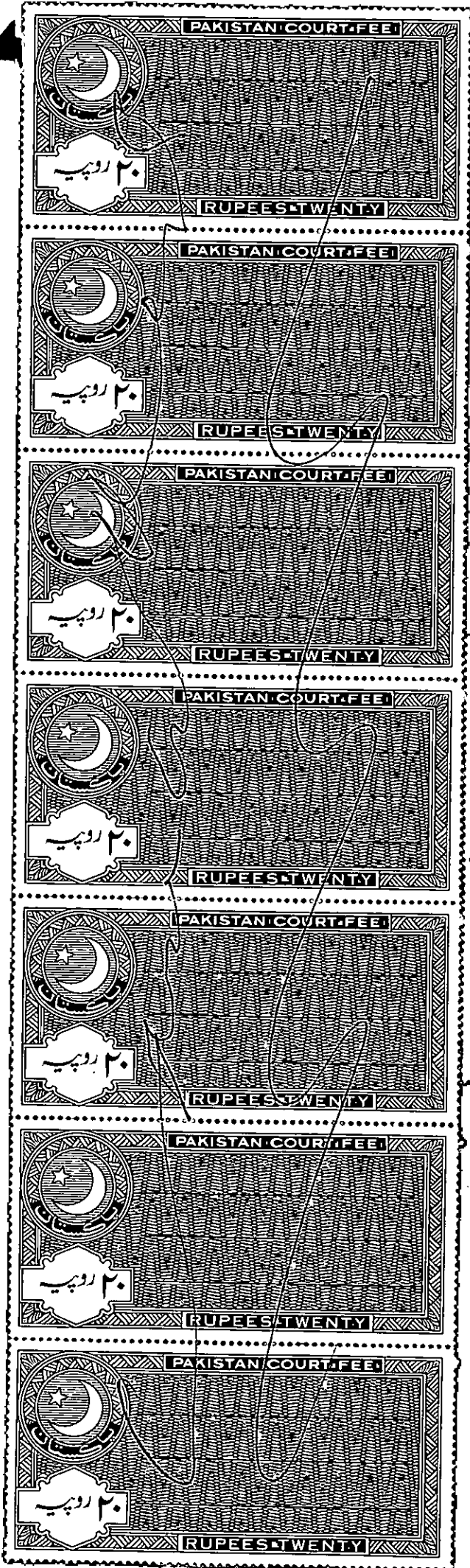
Please take notice that I am filing writ petition on behalf of petitioners before the Hon'ble Peshawar High Court, Peshawar to reinstate petitioner in service with all service benefits.



Saadullah Khan Marwat
Advocate,

Dated 08-11-2017

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FILED TODAY
Deputy Registrar

09 NOV 2017

بعدالت جناب پشاور ہائی کورٹ پشاور

محمد کبیر شاہ بنام دستگیر احمد و دیگر

دعویٰ رجسٹریشن

باعتبار اس کے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کے لئے سعد اللہ شاہان مروت ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق اور اس پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واختہ منظور و قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التواء مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز لقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 11/7

العبد العبد العبد

محمد کبیر شاہ
سعد اللہ شاہان مروت
ایڈووکیٹ
مس روینہ تبار
ایڈووکیٹ

FILED TODAY
Deputy Registrar

09 NOV 2017

IN THE PESHAWAR HIGH COURT, PESHAWAR.
OBJECTION SLIP

No. 5759

Kabir Shah V/S District and Session Judge

- 5 Affidavit is not duly attested/appended *before DR J* ✓
- 9 Copies of annexure *4, 6, 7, 8, 9, 10* are not legible/attested
- 15 ~~THREE~~ COMPLETE SPARE COPIES BE FILED IN THE SEPERATE FILE COVER.
- 33 Copies of comment/rejoinder/reply have not been handed over to the respondents/ other side

~~READER~~

27/2/18

Returned with above mentioned objections for removal to be re-submitted on or before _____

Alme
Deputy Registrar
Peshawar High Court, Peshawa

*scpt; to
to the court
8/3/18*

8/3/18

Received for Sealing
on 08/03/18 at **SCANNED**
10:30 Am **08 MAR 2018**

[Signature]

*6621
8/3/18*



11

Office of

THE DISTRICT & SESSIONS JUDGE NOWSHERA

Web: www.districtcourtsnowshera.gov.pk

Email: dsjnowshera@yahoo.com

dsjnsr@gmail.com

Ph: +929239220106

Fax: +929239220241

No. 375-1/2

Dated 23/2/2018

To

The Deputy Registrar (J),
Peshawar High Court,
Peshawar.

Subject: -

**WRIT PETITION NO. 4596-P /2017 MUHAMMAD
KABIR SHAH VS D&SJ NOWSHERA etc.**

Respected Sir,

I have the honour to refer to Hon,ble order of Peshawar High Court Peshawar, in writ Petition No 4596-P/2017 of dated 15/2/2018, a copy of the requisite comments have already been sent to your goodself vide this office letter No 235-1/2 dated 31-1-2018. Please.(copies enclosed for ready reference)

ZAHID MEHMOOD
District & Sessions Judge,
Nowshera

3 5759

FILED TODAY
Deputy Registrar

27 FEB 2018

RE-FILED TODAY

Deputy Registrar

08 MAR 2018



1

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THE DISTRICT & SESSIONS JUDGE NOWSHERA

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No. 375-1/2

Dated 23/2/2018

To

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Subject: -

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I have the honour to refer to Hon,ble order of Peshawar High Court Peshawar, in writ Petition No 4596-P/2017 of dated 15/2/2018, a copy of the requisite comments have already been sent to your goodself vide this office letter No 235-1/2 dated 31-1-2018. Please.(copies enclosed for ready reference)


ZAHID MEHMOOD
District & Sessions Judge,
Nowshera

3
5759

FILED TODAY
Deputy Registrar

27 FEB 2018

RE-FILED TODAY

Deputy Registrar

08 MAR 2018



Office of

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Ph: +929239220106

Fax: +929239220241

No. 235-1/2

Dated 31/1/18

To

The Deputy Registrar (J),
Peshawar High Court,
Peshawar.

Subject: -


WRIT PETITION NO. 4596-P /2017 MUHAMMAD
KABIR SHAH VS D&SJ NOWSHERA etc

Respected Sir,

I have the honour to refer to your office letter No. 306/
Judl dated 22/1/2018, a copy of the requisite comments have already been
submitted in the departmental appeal # 32-2017, regarding the subject cited
above is re submitted ~~to~~ your good self for further necessary action, please.

This office rely on same comments as submitted earlier
dated 04.10.2017.

Encl: Copy of Comments total pages (8)


ZAHID MEHMOOD
District & Sessions Judge,
Respondent # 1
Nowshera

FILED TODAY
Deputy Registrar

27 FEB 2018

No. 2803/D&SJ, NSR.

Dated, Nowshera, 04.10.2017.

From,

Shafiq Ahmad Tanoli,
District & Sessions Judge,
Nowshera.

TO,

The Registrar,
Peshawar High Court,
Peshawar

Subject:- DEPARTMENTAL APPEAL NO.32/2017
Muhammad Kabir Shah...vs..D&SJ, Nowshera.

Respected Sir,

Reference your letter No.14777/Admn Dated 14.09.2017, subject cited above, I have the honour to submit parawise comments as under:-

1. Para No.1 needs no comments.
2. Para No.2 is correct to the extent that appellant has served for about 22 years in judicial department, but he was always reprimanded, warned and punished and was never pated. He has been proceeded many times under the Government Servants (Efficiency and Discipline) Rules, 2011 and penalty of withholding three annual increments was imposed against him by the learned SCJ, Nowshera, vide his order dated 29.07.2016 after conducting proper inquiry and his appeal also failed. One of the inquiries is still pending against him.

(Copy of the order of learned SCJ, Nowshera, and of the complaint filed by Muhammad Saeed Khan Advocate, are attached herewith).

In the instant case complaint was filed on 02.05.2017 and the appellant submitted reply on 06.05.2017 and 25.05.2017, wherein he admitted the receipt of illegal gratification from the opponent of the complainant,

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27 FEB 2018


therefore, there was no need of conducting the ⁸proper ~~paper~~ inquiry in the case, which was dispensed with after his clear cut admission.

3. Para No.3 is correct.
4. Para-4 of the appeal supplements the guilt of the appellant and he cannot be exonerated from the charges on the basis of compromise with the complainant, rather this compromise further supplements that accused/appellant after the commission of offence beseeched the complainant forgiving him. The appellant is in the habit of receiving the illegal gratification and then beseeching the complainant to pardon him.
5. Reply to para-5 has already been given in the preceding para. That after admission of the clear guilt by the appellant there was no need of regular inquiry.

Reply to grounds of the appeal have already been given in the preceding paras, therefore, need no further comments, the appellant has been rightly removed from service as he is notorious and un-mendable in corruption which brings a bad name to the institution due to his illegal activities and foul practices.

Comments are submitted as desired, please.

Dated:-04.10.2017.


Shafiq Ahmad Tanol,
District & Sessions Judge,
Newsheer.

FILED TODAY
Deputy Registrar

27 FEB 2018


therefore, there was no need of conducting the ⁷ ~~proper~~ regular inquiry in the case, which was dispensed with after his clear cut admission.

3. Para No.3 is correct.
4. Para-4 of the appeal supplements the guilt of the appellant and he cannot be exonerated from the charges on the basis of compromise with the complainant, rather this compromise further supplements that accused/appellant after the commission of offence beseeched the complainant forgiving him. The appellant is in the habit of receiving the illegal gratification and then beseeching the complainant to pardon him.
5. Reply to para-5 has already been given in the preceding para. That after admission of the clear guilt by the appellant there was no need of regular inquiry.

Reply to grounds of the appeal have already been given in the preceding paras, therefore, need no further comments, the appellant has been rightly removed from service as he is notorious and un-mendable in corruption which brings a bad name to the institution due to his illegal activities and foul practices.

Comments are submitted as desired, please.

Dated:-04.10.2017.


Shafiq Ahmad Tanol,
 District & Sessions Judge,
 Nowsheer.

عدالت جناب ڈسٹرکٹ صاحب نوشہرہ

درخواست بمراء قانونی کاروائی کرانے برخلاف بیلف کبیر شاہ

جناب عالی

گزارش ہے کہ سائل ڈسٹرکٹ بارکامبر ہے اور ریگورلر پریکٹس کر رہا ہے والد ام لہاس خان نے مجھے بتایا ہے کہ کس میں ہمراہ برادر ام لہاس خان اور پیرا ام ناصر علی سمورہ 017-3-3 بوقت قریب 12:30 بجے اپنے موٹر کار میں سوار CNG پمپ نزد انسا خیل بالا پہلوان شاہ جارت تھے اس دوران دیکھا کہ سہمی اصغر عالم خان ولد نور عالم خان چچا زاد بیٹا محمد مسلم بمعہ دیگر دو کسان اسم نامعلوم متدعو یہ اراضی میں بیائش اور پتھر لگا کر بنائی کر رہے تھے۔ ساتھ ایک ٹریکٹر بھی کھیت میں کھڑا تھا میں نے دیکھا کہ ہماری اراضی میں جس میں گندم استادہ ہے میں پتھر لگا کر ہماری اراضی کو بھی زیر قبضہ لے رہے تھے۔ جب میں گاڑی سے اتر تو میرے عقب فوراً ٹورل سے سردار عالم بمعہ بیلف کبیر شاہ نکل آئے اور ساتھ ہی سردار عالم نے اپنے موبائل سے ویڈیو ریکارڈنگ شروع کی اور ٹریکٹر سے بس شروع کیا۔ بیلف کبیر شاہ نے مجھے عدالتی نوٹس برائے سمورہ 08-03-2017 عدالت جناب اعجاز الحق صاحب کو پیش ہونے کی عرض پیش کی جس پر میں نے دستخط کیا اور ساتھ یہ بھی لکھ دیا کہ ٹریکٹر موجودگی بیلف کھیت میں مل بذریعہ ٹریکٹر چلا رہے ہیں۔

جناب عالی کبیر شاہ بیلف کو عدالت حضور سے موقع کی موجودہ رپورٹ دائر کرنے کے احکامات بروئے نوٹس ملے تھے جبکہ کبیر شاہ بیلف مخالف فریق کیساتھ لگے جوڑ کر کے میری دیگر متعلقہ اراضی پر فصل گندم میں پتھر ڈلوا رہا تھا اور جائے متدعو یہ پر چونے کی نشانات اور پتھر بے ایمانے بیلف رکھوا رہے تھے۔ بیلف کبیر شاہ عدالت احکامات سے روگردانی کر کے مرتکب جرم ہوا اور مستوجب سزا ہے۔ حالانکہ مذکورہ مقدمہ میں عدالت حضور میں جواب درخواست جمع نہ کیا جو کے اگلی پیشی پروکیل ام دائر کرتا۔ اندر میں دوران میرے خلاف سازشی طور بیلف کبیر شاہ نے مخالف فریق کیساتھ صل کر جائیداد متدعو یہ میں ماروائے احکامات عدالت کام بذریعہ ٹریکٹر وغیرہ کر دیا۔ عدالت حضور میں ہرگز سائل فریق کو جائیداد متدعو یہ میں ٹریکٹر سے مل جانا پتھر دانے اور چونے سے نشانات ڈالوانے کے احکامات ہرگز نہ دیے تھے۔ لہذا آپ جناب کو درخواست ہذا کی زریعے گزارش کرتا ہوں کہ من سائل کی دادرسی فرمائی جا کہ بیلف کبیر شاہ کے خلاف حسب ضابطہ کاروائی کے احکامات صادر فرمائیں اور بیلف کو برطرف کیا جائے۔

(Handwritten Signature)

سائل بذریعہ خود

محمد سعید خان ایڈووکیٹ ڈسٹرکٹ کورٹ نوشہرہ

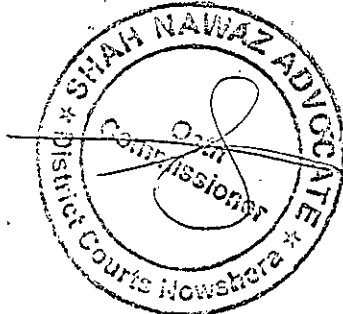
03459546376 # Mob

المرقوم 04-03-2017

بیان حلقہ

حلقہ بیان کرتا ہوں کہ جملہ سزا تب بالا میرے علم و یقین کے مطابق درست اور ٹھیک ہے کوئی امر نہ رکھا گیا ہے

(Handwritten Signature)



06

27-07-2016

Replies of the officials Kabir Shah and Asfandyar received. To be placed on file. As they are not present for personal hearing. To come up for their appearance / attendance on next date i.e 28.07.2016.

Nusrat Naz
Nusrat Naz,
Senior Civil Judge,
Nowshera.

Or 07

28.07.2016

Both officials present. They are heard. To come up for order on 29.07.2016.

Nusrat Naz
Nusrat Naz,
Senior Civil Judge,
Nowshera.

Or 08

29.07.2016

Both the delinquent officials namely Kabir Shah and Asfandyar (baillifs of the court) present.

Vide my separate office order of even date, both the delinquent officials failed to give any plausible reasons for their acts/ omission detailed to them in the notices earlier served upon them and as such their acts and omission are not justified legally by them which amounts to misconduct and inefficiency on their part, hence, I as Authority, being fully satisfied from the available record, impose minor penalty in shape of withholding annual increment for three years upon bailliff "Kabir Shah" and withholding of annual increment for two years upon bailliff "Asfandyar" under rule 4(a)(ii) of the Government Servants (Efficiency & Discipline) Rules, 2011.

Order announced. Copies of this order be issued to the officials concerned as well as to the CGC for necessary action.

File be consigned to record room after completion of compilation.

Announced.
Dated. 29.07.2016.

Nusrat Naz
Nusrat Naz,
Senior Civil Judge,
Nowshera.

ATTENDED
EXAMINED BY
Branch, D.S.J. Nowshera

12/8 JUL 2016

Or.....06

21.07.2016

Replies of the officials Kabir Shah and Asfandyar received. It be placed on file. As they requested for personal hearing. To come up for their appearance / attendance on next date i.e 28.07.2016.

Nusrat
Nusrat Naz
Senior Civil Judge,
Nowshera

Or.....07

28.07.2016

Both officials present. They are heard. To come up for order on 29.07.2016.

Nusrat
Nusrat Naz
Senior Civil Judge,
Nowshera

Or.....08

29.07.2016

Both the delinquent officials namely Kabir Shah and Asfandyar (bailiffs of the court) present.

Vide my separate office order of even date, both the delinquent officials failed to give any plausible reasons for their acts/ omission detailed to them in the notices earlier served upon them and as such their acts and omission are not justified legally by them which amounts to misconduct and inefficiency on their part, hence, I as Authority, being fully satisfied from the available record, impose minor penalty in shape of withholding annual increment for three years upon bailiff "Kabir Shah" and withholding of annual increment for two years upon bailiff "Asfandyar" under rule 4(a)(ii) of the Government Servants (Efficiency & Discipline) Rules, 2011.

Order announced. Copies of this order be issued to the officials concerned as well as to the COC for necessary action.

File be consigned to record room after completion and compilation.

Announced.
Dated. 29.07.2016.

Nusrat
Nusrat Naz,
Senior Civil Judge,
Nowshera.

IN THE COURT OF SENIOR CIVIL JUDGE, NOWSHERA

OFFICE ORDER

Whereas you Mr. Kabir Shah and Asfandyar bailiffs of District Courts Nowshera have failed to give any plausible reasons for your acts/ omission detailed to you in the notices earlier served upon you and to state your acts and omission are not justified legally by both of you which amounts to misconduct and inefficiency on your part, hence, I as Authority, impose minor penalty of withholding annual increment for three years upon bailiff "Kabir Shah" and withholding of annual increment for two years upon bailiff "Asfandyar" under rule 4(4)(b) of the Government Servants (Efficiency & Discipline) Rules, 2011.

Nusrat
Nusrat Kaz,
Senior Civil Judge,
Nowshera.

No. 2036 - 4th SCJ, Nowshera dated 29.07.2016.

Copy forwarded for information and necessary action to:

1. The Registrar, Peshawar High Court, Peshawar,
2. The hon'ble District & Sessions Judge, Nowshera,
3. The District Accounts Officer, Nowshera,
4. CoC of this court.
5. The officials concerned.

Nusrat
Nusrat Kaz,
Senior Civil Judge
Nowshera.

~~ATTENDED~~

Examined and signed
District Judge
13.0 JUL 2016

13

IN THE COURT OF SENIOR CIVIL JUDGE, NOWSHERA

OFFICE ORDER

Whereas you Mr. Kabir Shah and Asfandyar bailiffs of District Courts Nowshera have failed to give any plausible reasons for your acts/ omission detailed to you in the notices earlier served upon you and as such your acts and omission are not justified legally by both of you which amounts to misconduct and inefficiency on your part, hence, I as Authority, impose minor penalty of withholding annual increment for three years upon bailiff "Kabir Shah" and withholding of annual increment for two years upon bailiff "Asfandyar" under rule 4(a)(ii) of the Government Servants (Efficiency & Discipline) Rules, 2011.

Nusrat
Nusrat Naz,
Senior Civil Judge,
Nowshera.

No. 2038-42 SCJ, Nowshera dated 29.07.2016.

Copy forwarded for information and necessary action to :

1. The Registrar, Peshawar High Court, Peshawar,
2. The hon'ble District & Sessions Judge, Nowshera,
3. The District Accounts Officer, Nowshera,
4. CoC of this court.
5. The officials concerned.

Nusrat
Nusrat Naz,
Senior Civil Judge,
Nowshera.

IN THE COURT OF MR. SHAFIQ AHMAD TANOLI, DISTRICT & SESSIONS JUDGE, NOWSHERA.

CONSOLIDATED ORDER.
Dated: 03.05.2017.

Appellant Asfandyar present, whereas appellant Kabir Shah absent.

Through this single order I intend to dispose of two departmental appeals, filed by two bailiffs namely Kabir Shah and Asfandyar of District Courts, Nowshera, against the impugned order dated 29.07.2016 of Mrs. Nusrat Naz, learned Senior Civil Judge, Nowshera, whereby, after conclusion of department inquiry the appellants were imposed minor penalty of withholding annual increment for three years and two years respectively.

Brief facts giving rise to the present appeals are that on 25.06.2016 notice for recovery of minors was issued through bailiff in petition u/s 491 Cr.P.C, which was entrusted by Naib Nazir to Bailiff Asfandyar for further proceeding, however he did not return the said notice, whereas on next day bailiff Kabir Shah without permission and direction taken the said notice for execution, therefore, inquiry under efficiency and disciplinary rules was initiated against both the appellants and entrusted to the court of learned Senior Civil Judge, Nowshera, as both the appellants are under the establishment of Senior Civil Judge, Nowshera. Both the appellant were summoned by the said court and show cause notices were issued to them on 29.06.2016 to which they submitted replies. Being dissatisfied from their replies, the learned Senior Civil Judge, Nowshera, he issued notices under rule 5(1)(a) read with Rule 7 to both

عنون ایمل
کبیر شاہ بائیف
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مفتی اللہ

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Shafiq Ahmad Tanoli
District & Sessions Judge,
Nowshera

3.5.17

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17

13/5/17

IN THE COURT OF MR. SHAFIQ AHMAD TANOLI, DISTRICT & SESSIONS JUDGE, NOWSHERA.

عنون اپیل
کبیر شاہ بیگ
صفت الشرفیہ

CONSOLIDATED ORDER.
Dated: 03.05.2017.

8/13
6/9
2016
3/5
2017

Appellant Asfandyar present, whereas appellant Kabir Shah absent.

Through this single order I intend to dispose of two departmental appeals, filed by two bailiffs namely Kabir Shah and Asfandyar of District Courts, Nowshera, against the impugned order dated 29.07.2016 of Mrs. Nusrat Naz, learned Senior Civil Judge, Nowshera, whereby, after conclusion of department inquiry the appellants were imposed minor penalty of withholding annual increment for three years and two years respectively.

Brief facts giving rise to the present appeals are that on 25.06.2016 notice for recovery of minors was issued through bailiff in petition u/s 491 Cr.P.C, which was entrusted by Naib Nazir to Bailiff Asfandyar for further proceeding, however he did not return the said notice, whereas on next day bailiff Kabir Shah without permission and direction taken the said notice for execution, therefore, inquiry under efficiency and disciplinary rules was initiated against both the appellants and entrusted to the court of learned Senior Civil Judge, Nowshera, as both the appellants are under the establishment of Senior Civil Judge, Nowshera. Both the appellant were summoned by the said court and show cause notices were issued to them on 29.06.2016 to which they submitted replies. Being dissatisfied from their replies, the learned Senior Civil Judge, Nowshera, issued notices under rule 5(1)(a) read with Rule 7 to both

Shafiq Ahmad Tanoli
District & Sessions Judge
Nowshera

3.5.17

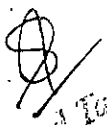
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13/5/17

the appellants submitted replies to the said notices and they were personally heard and after hearing the learned Senior Civil Judge, Nowshera, imposed minor penalty in shape of withholding annual increment for three years upon bailiff Kabir Shah and withholding of annual increment for two years upon bailiff Asfandyar under Rule 4(a)(ii) of the Government Servants (Efficiency & Discipline) Rules, 2011, vide impugned order dated 29.07.2016; hence these appeals.

Both of them were heard personally and record perused.

Bailiff Asfandyar pleaded that he left the process/notice at his home and bailiff Kabir Shah took the same from his home without his permission and knowledge, therefore, he is not guilty of any misconduct, whereas Kabir Shah pleaded that it was Asfandyar bailiff, requested him to execute the notice, therefore, he executed the same.

It has been admitted by the bailiff Asfandyar that he did not serve the notice and left the process at his home wherefrom it was taken by the Kabir Shah without his knowledge and permission. This narration of the Asfandyar is unbelievable because Kabir Shah cannot take the notice/process from his residence without his permission and knowledge. How a stranger can be handed over the official document by the family of the Asfandyar without his knowledge and permission. Both the bailiffs have their cell phones with them, therefore, it is also not logical that he would have not informed him through phone. If his narration as mentioned above is accepted, it also goes against


Shafiq Ahmad Tanoli
District & Sessions Judge,
Nowshera

3.5.17

the appellants submitted replies to the said notices and they were personally heard and after hearing the learned Senior Civil Judge, Nowshera, ~~imposed minor penalty in shape of withholding annual increment for three years upon bailiff Kabir Shah and withholding of annual increment for two years upon bailiff Asfandiyar under Rule 4(a)(ii) of the Government Servants (Efficiency & Discipline) Rules, 2011, vide impugned order dated 29.07.2016; hence these appeals.~~

Both of them were heard personally and record perused.

Bailiff Asfandiyar pleaded that he left the process/notice at his home and bailiff Kabir Shah took the same from his home without his permission and knowledge, therefore, he is not guilty of any misconduct, whereas Kabir Shah pleaded that it was Asfandiyar bailiff, requested him to execute the notice, therefore, he executed the same.

It has been admitted by the bailiff Asfandiyar that he did not serve the notice and left the process at his home wherefrom it was taken by the Kabir Shah without his knowledge and permission. This narration of the Asfandiyar is unbelievable because Kabir Shah cannot take the notice/process from his residence without his permission and knowledge. How a stranger can be handed over the official document by the family of the Asfandiyar without his knowledge and permission. Both the bailiffs have their cell phones with them, therefore, it is also not logical that he would have not informed him through phone. If his narration, as mentioned above is accepted, it also goes against


Shefqi Ahmad Tanoli
District & Sessions Judge,
Nowshera

3.5.17

him because it shows his negligence in respect of keeping of the official document.

Similarly, bailiff Kabir Shah has also acted without the direction and permission of the authority issuing the process and appears to have acted in connivance with the complainant for some extraneous consideration, therefore, both the appellants have been properly found guilty and convicted. As mentioned above these appeals having no merits are dismissed. Record be sent back alongwith copy of this order and files of this court be consigned to the record room after its necessary completion and compilation.

Announced.
03.05.2017


Shafiq Ahmad Tanoli,
District & Sessions Judge,
Nowshera.


Shafiq Ahmad Tanoli
District & Sessions Judge,
Nowshera

(10)

him because it shows his negligence in respect of keeping of the official document.

Similarly, bailiff Kabir Shah has also acted without the direction and permission of the authority issuing the process and appears to have acted in connivance with the complainant for some extraneous consideration, therefore, both the appellants have been properly found guilty and convicted. As mentioned above these appeals having no merits are dismissed. Record be sent back alongwith copy of this order and files of this court be consigned to the record room after its necessary completion and compilation.

Announced.
03.05.2017


Shafiq Ahmad Tanoli,
District & Sessions Judge,
Nowshera.

Shafiq Ahmad Tanoli
District & Sessions Judge,
Nowshera



Office of
THE DISTRICT & SESSIONS JUDGE NOWSHERA

Web: www.districtcourtsnowshera.gov.pk

Email: dsjnowshera@yahoo.com

dsjnsr@gmail.com

Ph: +929239220106

Fax: +929239220241

No. _____

Dated at Nowshera the _____

Writ petition # 4596-P/2017

Muhammad Kabir Shah.. vs.. District Judge and others

AFFIDAVIT

I Abdul Mateen, Superintendent, Sessions Courts, Nowshera do hereby solemnly affirm and declare that the content (documents) of the reply of the learned District & Sessions Judge, Nowshera in above writ petition are true and correct to the best of my knowledge and belief.

Dated. 8/3/2018.

Abdul Mateen
Superintendent,
Sessions Courts,
Nowshera

Sessions Courts Nowshera

No. 17763

Certified that the above was verified on solemnly affirmation before me in office, this 8th day of Mar 18 by Abdul Mateen s/o Deptd. No. Nowshera who was identified by self who is personally known to me:

Oath Commissioner
Peshawa High Court Peshawar.

8/03/2018

RE-FILED TODAY
Deputy Registrar
08 MAR 2018

Madra Verified



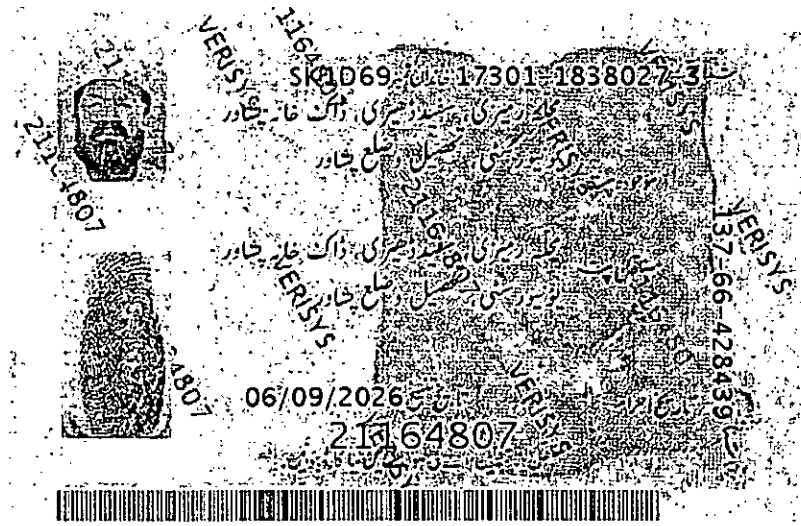
National Database and Registration Authority
Research and Development

Technology

homepage verisys individual-record

ONLINE Verisys VERIFICATION SYSTEM

Verification Date: **March 8, 2018**
Identity Card Number:
17301-1838027-3
Issue Date: (YYYY-MM-DD)



Census 1998 Database

[x]

The individual exists in the census database as خلیل خان خلیل father's name
موضع سفید ڈھیری پشاور پشاور اتحاد current address
"April 1, 1966" and date of birth

No 1331 /D&SJ,NSR

Dated, 11 / 06 /2018

From,

Nasrullah Khan Gandapur
District & Sessions Judge
Nowshera

To

The Worthy Registrar,
Peshawar High Court
Peshawar.

Subject: - Writ Petition No 4596/2017

(Muhammad Kabir Shah Vs **D&SJ Nowshera**)

Peshawar High Court Peshawar	
Receipt No.	<u>9685</u>
Date:	<u>22/6/18</u>
1- MIT	<input type="checkbox"/>
2- Dir (HRC)	<input type="checkbox"/>
3- Dir (ReG)	<input type="checkbox"/>
4- Dir (HR W)	<input type="checkbox"/>
5- DPD	<input type="checkbox"/>
6- PSO	<input type="checkbox"/>
7- DBA	<input type="checkbox"/>
8- DIT	<input type="checkbox"/>
9- AR(J)	<input type="checkbox"/>
10- AR(G)	<input checked="" type="checkbox"/>

Respected Sir,

Reference your letter no 7624/Admn dated 26.5.2018 regarding the subject captioned above

Parawise comments of the undersigned in subject case are as under,

- 1- Para No -1 is correct to the extent that appellant has served for about 22 years in Judicial department, but during his entire period of service he was warrand by almost all the Senior Civil judges of this District for his misconduct (copies of warnings are annexure A)
- 2- Para No-2 is correct case titled Shamsher Ali Vs Collector is pending before the court of learned SCJ for restraining the construction of BHU (Basic Health Unit) on khasra No 2666.
- 3- Para No- 3 and 4 are correct application was submitted by the plaintiff and bailiff submitted his report.
- 4- Para 5 is correct to the extent that plaintiff Shamsher Ali filed a complaint against the petitioner and requested for taking legal action against the petitioner as he has interrupted in his private /personal matters.
- 5- As concerned the Para No- 6, on 22.5.2017 and again on 5.6.2017 the Petitioner submitted his indecisive statement before the court about his Corruption of Rs- 600/ and of Rs- 1000/ rest of the Para is incorrect.

FILED TODAY
Deputy Registrar
26 JUN 2018

[Handwritten signature]

6- Para # 7 is correct to the extent of service of show cause notice , the petitioner have been give several chances and was personally heard spot witness Akram khan was also summoned and recorded his statement.

The petitioner has gone through the detail inquiry, conducted by the Civil Judge II and minor penalty of stopping three increments for three years was imposed upon him while one detail inquiry is pending before the court of Civil Judge I Nowshera, therefore the undersigned consider it not necessary to conduct another detail inquiry against the petitioner.

7-Para No- 8 is correct and affidavit is placed on file while Para No-9 is also Correct

8- Para #10, 11, 12 and 13 are correct and need no comments.

9- Para # 14 the order announced by the respected judge of the august Peshawar High Court on 20.10.2017 is clear and needs no comments.

REPLY OF GROUND

- a- A , B ,C, D,E and H already explained in the reply of Para #7 ground F is explained in the reply of Para # 1
- b- Ground g is correct report regarding disputed khasra is submitted by the concerned which is placed on file.
- c- The petitioner is removed from service due to his indulgement/involment in monitory corruption. All members of District courts are committed to glorify and restore the public trust on judicial system in this area ,while such kind of people are disparage these efforts.

Therefore the petitioner is not entitled/deserve for any mercy.

FILED TODAY
Deputy Registrar
26 JUN 2018


NASRULLAH KHAN GANDAPUR
District & Sessions Judge
Nowshera

S#1 - Para # 1
Mornings

No. _____/SCJ, Nowshera

Dated 30.07.2013

To

✓ Mr. Kabir Shah, Bailiff,

Mr. Shoaib, Process Server,

Attached to this Court.

SUBJECT: WARNING

Memo:

With reference to explanation bearing endorsement No. 1807 called by this Court on 20.07.2013 regarding absent from your official duty. Your replies to explanation are not satisfactory, therefore you are warned that if in future you again availed leave without prior permission, one increment of absentee would be stopped for one year.

Therefore, you are warned to be careful in future.

Sumbal Naseer
Sumbal Naseer
Senior Civil Judge,
Nowshera

Dated 30.07.2013

No. 1877/SCJ/JM, Nowshera

Copy forwarded to the.

1. Naib Nazir, Nowshera.
2. Clerk of Court to place the warning on his personal file.
3. Office copy.

Sumbal Naseer
Sumbal Naseer
Senior Civil Judge,
Nowshera

No. _____ /SCJ, Nowshera Dated 15.03.2012

To

✓ Mr. Kabir Shah (Bailiff)
attached with this Court.

SUBJECT: WARNING

Memo:

With reference to your monthly performance report for the month of February 2012, you have returned 06 summons/notices without report of service out of total 41 summons/notices, which were assigned to you in the month of February, 2012, hence your monthly performance was found & marked weak/scrawny by the learned District & Sessions Judge, Nowshera.

Therefore, in the light of directions of learned District & Sessions Judge, Nowshera you are strictly warned to be careful in future.

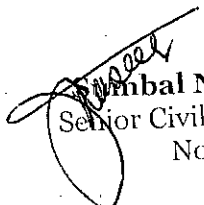
Sumbal Naseer
Senior Civil Judge,
Nowshera

No. 557 /SCJ/JM, Nowshera

Dated 15.03.2012

Copy forwarded to the.

1. Hon'ble District Sessions Judge, Nowshera for information.
2. ✓ Clerk of Court to place the warning on his personal file.
3. Office copy.


Sumbal Naseer
Senior Civil Judge,
Nowshera

1/6
557
557

No. _____ /SCJ, Nowshera

Dated 10.10.2011

To:

- (1). Mr. Kabir Shah,
Bairiff
- (2). Mr. Nadeem
Bailiff
Establishment of the Court of
Senior Civil Judge, Nowshera.

SUBJECT: EXPLANATION REGARDING POOR PERFORMANCE

Upon perusal of performance report of Bailiffs & Process Servers for the month of July & September 2011, your performance were found weak/scrawny, which amounts to misconduct on your part and inefficiency culpable under Efficiency & Disciplinary, Rules, 1973.

Therefore, you are asked to explain as to why you should not be proceeded against under the said rules. Your replies in writing should reach to the undersigned within seven days upon receipt of this notice.

Zia-ur-Rehman,
Senior Civil Judge,

Senior Civil Judge/JM
with powers u/s 30 Cr. P.C
Dated 10.10.2011
Nowshera

No. 1836 /SCJ/JM, Nowshera

Copy forwarded for information to:-

1. Learned the District & Sessions Judge, Nowshera.
- ✓ 2. COC of this court to place the explanation on their personal files.
3. Office Copy.

Zia-ur-Rehman
Senior Civil Judge
Senior Civil Judge/JM
with powers u/s 30 Cr. P.C
Nowshera

No. _____ /SCJ, Nowshera Dated 17.11.2011

To:

- ✓ (1) Mr. Kabir Shah,
- (2) Muhammad Nadeem (Bailiffs) attached with court of Senior Civil Judge, Nowshera.

SUBJECT: WARNING

Memo:

This is with reference to the explanation called by the predecessor in office bearing No. 1836 dated 10.10.2011 regarding your weak/scrawny performance in the month of July & September, 2011. The replies submitted by you in response for above mentioned explanation were not found satisfactory, therefore, you are strictly warned to be careful in future.

- sd -
Sumbal Naseer
Senior Civil Judge,
Nowshera

Dated 17.11.2011

No. 2049 /SCJ/JM, Nowshera

Copy forwarded to the.

1. Hon'ble District Sessions Judge, Nowshera for information.
- ✓ 2. Clerk of Court to place the warning on their personal files.
3. Office copy.

Sumbal Naseer
Senior Civil Judge,
Nowshera


S# 6 P# 7

Spot Witness Akram Khan,

ORDER-03

15.05.2017.


Both parties present. Respondent Kabir Shah Bailiff admits that he has received Rs.500/- from complainant in respect of rent. The second allegation against the respondent is that he has also received Rs.1000/- ^{defdt in presence of} from one Akram. Hence, complainant is directed to produce him before the court on 22/5/2017


Shafiq Ahmad Tanoli,
District Judge, Nowshera.

ORDER--04

22.05.2017.

Complainant present in person. Respondent Kabir Shah also present in person. One Akram Khan, witness present and stated before the court that he was present when Sher Wali, opponent of complainant, ~~gave~~ gave money to respondent Kabir Shah. He also submitted his statement in written form in this respect, duly attested by Oath Commissioner. Respondent also stated before the court that the said Sher Wali Tekidar by his own sweet will has given him Rs.1000/- and he has received Rs.600/- from complainant as rent ^{fare}. He submitted reply in this respect. To come up for consideration/further proceeding on 29/5/17


Shafiq Ahmad Tanoli,
Sessions Judge, Nowshera.

S# 6 - Para # 7

With holding increments

Both officials are present today.

Notice under Rule 5(1)(a) read with rule 7 of E & D, Rules, 2011 is given to them. Copy of which is placed in this file.

Delinquent officials are given opportunity of personal hearing if they desire so and seven

days ^{time} of the receipt of this notice is given for the reply of the officials

If no reply is received it shall be presumed as no defence to put in. To come up on 27/7/16.

Nusrat Naz
Senior Civil Judge
Newshera

0-3
29-6-16

Both officials Kasbi Shah and
Asfandiyar. bailiffs present.
Explanation is called from
them. To come up on

13/7/16 for replies
NUSRAT N
Senior Civil Judge
Nowshera

3

0-4
13-7-16

Accused officials are present.
Their replies also received.
Same are placed on file.
To come up for further
proceedings and present
of replies. To come
up on 18-7-16.
Nusrat

0-5
18-7-16

Due to rush of work file
not present. To come up
on 21-7-16. Both officials be
summoned.
Nusrat

IN THE COURT OF SENIOR CIVIL JUDGE, NOWSHERA

OFFICE ORDER

Whereas you Mr. Kabir Shah and Asfandyar bailiffs of District Courts Nowshera have failed to give any plausible reasons for your acts/ omission detailed to you in the notices earlier served upon you and as such your acts and omission are not justified legally by both of you which amounts to misconduct and inefficiency on your part, hence, I as Authority, impose minor penalty of withholding annual increment for three years upon bailiff "Kabir Shah" and withholding of annual increment for two years upon bailiff "Asfandyar" under rule 4(a)(ii) of the Government Servants (Efficiency & Discipline) Rules, 2011.

Nusrat

Nusrat Naz,
Senior Civil Judge,
Nowshera.

No. 2038 - 42 SCJ, Nowshera dated 29.07.2016.

Copy forwarded for information and necessary action to :

1. The Registrar, Peshawar High Court, Peshawar,
2. The hon'ble District & Sessions Judge, Nowshera,
3. The District Accounts Officer, Nowshera,
4. CoC of this court.
5. The officials concerned.

Nusrat

Nusrat Naz,
Senior Civil Judge,
Nowshera.

S#6 Para#7
Pending Inquiry with
CSI

عدالت جناب ڈسٹرکٹ جج صاحب نوشہرہ

Report
concerned
of
CSI
for

درخواست بمطابق قانونی کارروائی کرانے برخلاف بیلف کبیر شاہ

Sessions Judge
Nowshera

جناب عالی

گزارش ہے کہ سائل ڈسٹرکٹ بار کالمبر ہے اور ریگورل پریکٹس کر رہا ہے والد ام لبتاس خان نے مجھے بتایا ہے کہ کل میں ہمراہ برادر ام طماس خان اور پیرا ام ناصر علی بمورخہ 017-3-3 بوقت قریب 12:30 بجے اپنے موٹر کار میں سوار CNG پمپ نزد اضانیل بالا پہلوان سٹاپ جا رہے تھے۔ اس دوران دیکھا کہ مسی اصغر عالم خان ولد نور عالم خان پچازاد بیٹا محمد اسلم بمعہ دیگر دو کسان اسم نامعلوم متدعو یہ اراضی میں پیمائش اور پتھر لگا کر چوٹائی کر رہے تھے۔ ساتھ ایک ٹریکٹر بھی کھیت میں کھڑا تھا میں نے دیکھا کہ ہماری اراضی میں جس میں گندم استادہ ہے میں پتھر رکھوا کر ہماری اراضی کو بھی زیر قبضہ لے رہے تھے۔ جب میں گاڑی سے اترتا تو میرے عقب فوراً فلورٹل سے سردار عالم بمعہ بیلف کبیر شاہ نکل آئے اور ساتھ ہی سردار عالم نے اپنے موبائل سے ویڈیو ریکارڈنگ شروع کی اور ٹریکٹر سے ہل شروع کیا۔ بیلف کبیر شاہ نے مجھے عدالتی نوٹس برائے مورخہ 08-03-2017 بعدالت جناب اعجاز الحق صاحب کو پیش ہونے کی عرض پیش کی جس پر میں نے دستخط کیا اور ساتھ یہ بھی لکھ دیا کہ ٹریکٹر موجودگی بیلف کھیت میں ہل بذریعہ ٹریکٹر چلا رہے ہیں۔

جناب عالی کبیر شاہ بیلف کو عدالت حضور سے موقع کی موجودہ رپورٹ دائر کرنے کے احکامات بروئے نوٹس ملے تھے جبکہ کبیر شاہ بیلف مخالف فریق کیساتھ گٹھ جوڑ کر کے میری دیگر متعلقہ اراضی پر فصل گندم میں پتھر ڈالوا رہا تھا اور جائے متدعو یہ پر چوٹے کی نشانات اور پتھر بے ایمانے بیلف رکھوا رہے تھے۔ بیلف کبیر شاہ عدالت احکامات سے روگردانی کر کے مرتکب جرم ہوا اور مستوجب سزا ہے۔ حالانکہ مذکورہ مقدمہ میں عدالت حضور میں جواب درخواست جمع نہ کیا جو کے اگلی پیشی پر وکیل ام دائر کرتا۔ اندریں دوران میرے خلاف سازشی طور بیلف کبیر شاہ نے مخالف فریق کیساتھ مل کر جائیداد متدعو یہ میں ماروائے احکامات عدالت کام بذریعہ ٹریکٹر وغیرہ کر دیا۔ عدالت حضور میں ہرگز سائل فریق کو جائیداد متدعو یہ میں ٹریکٹر سے ہل چلانا پتھر ڈالنے اور چوٹے سے نشانات ڈالوانے کے احکامات ہرگز نہ دیے تھے۔

لہذا آپ جناب کو درخواست ہذا کی ذریعے گزارش کرتا ہوں کہ من سائل کی دادری فرمائی جا کر بیلف کبیر شاہ کے خلاف حسب ضابطہ کارروائی کے احکامات صادر فرمائیں اور بیلف کو برطرف کیا جائے۔

سائل بذریعہ خود

محمد سعید خان ایڈووکیٹ ڈسٹرکٹ کورٹ نوشہرہ
Mob # 03459546376

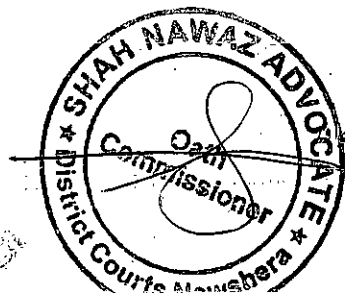
المرقوم: 04-03-2017

بیان حلفی

حلفاً بیان کرتا ہوں کہ جملہ مراتب بالا میرے علم و یقین کے مطابق درست اور ٹھیک ہے

کوئی امر مخفی نہ رکھا گیا ہے

العبد



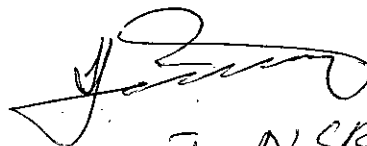
ATTESTED

ORDER - 1

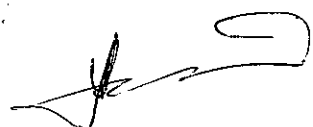
4.3.2017

✓

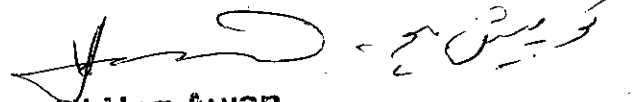
Instant complaint marked to this Court, by the Honorable Distt. Judge Nowshera. It be registered. Notice be issued to Respdnt. Official for 8/3/2017.


CJ-II, NSR
Ejaz Ul Haq Awan
Civil Judge-II
Nowshera

0-2
8/3/2017
سخت طفر - الزام علیہ کبریا کبریا کبریا
20.3.2017


Ejaz Ul Haq Awan
Civil Judge-II
Nowshera

0-3
20/3/2017
پر دفتر لیسٹن طفر - الزام علیہ نے جواب کے لئے سلیٹ طلب کی -
آفری سلیٹ دی گئی - 20/3/2017


Ejaz Ul Haq Awan
Civil Judge-II
Nowshera

15-18
18-4-18
صفت بزرگ مکرت کا پتہ

الزراعت علیہ جامعہ

اصناف والیہ شجرہ

اصناف الیہ شجرہ الزراعت علیہ

7-5-18
لو طلب ہوں

14/5/18

16-18
7-5-18
صفت بزرگ مکرت

الزراعت علیہ جامعہ

اصناف والیہ شجرہ

اصناف الیہ شجرہ الزراعت علیہ

2-6-18
لو طلب ہوں

15/5/18

BEFORE HON'BLE PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No. 4596-P/2017

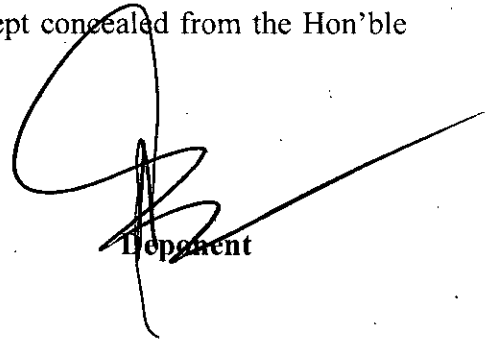
Muhammad Kabir Shah.....Petitioner)

VS

District and Session Judge, Nowshera..... (Respondent)

AFFIDAVIT

I, Abdul Mateen, Superintendent District Court Nowshera do here by solemnly affirm and declare that the contents of the para wise comments/written reply are true and correct to the best of my knowledge and belief and nothing has been kept concealed from the Hon'ble Court.



Deponent

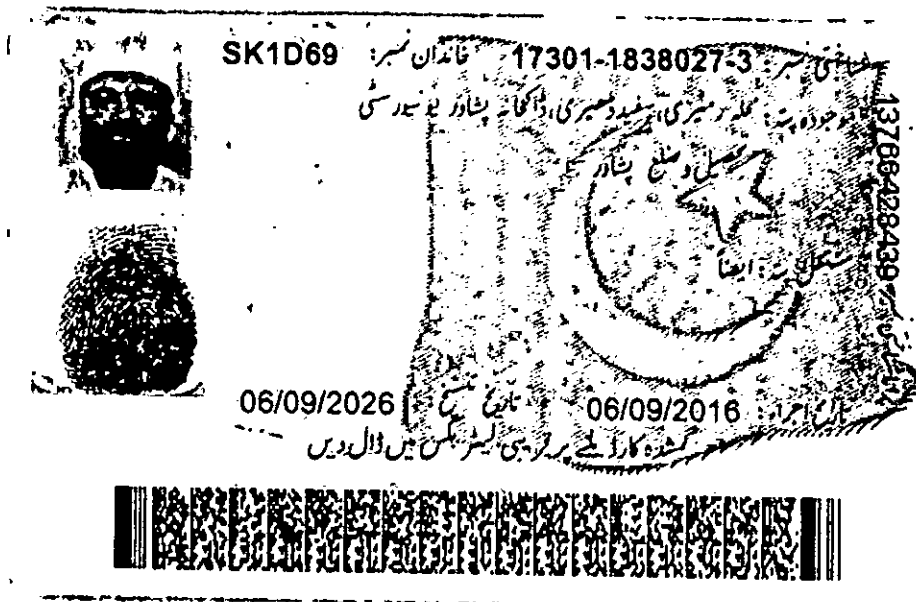
Dated: 26/06/2018

No: 1608

Certified that the above was verified on solemnly affirmation before me in office, this 26 day of Jun 18, Abdul Mateen, District and Session Judge, Nowshera who was personally known to me.

Abul
Oath Commissioner
Peshawar High Court, Peshawar.
26/6/2018

FILED TODAY
Deputy Registrar
26 JUN 2018



29/10/18

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 4596/2017

Fixed for 31-10-2018

Muhammad Kabir Shah

versus

District Judge & Others

REJOINDER

Respectfully Sheweth,

ON FACTS

1. Correct to the extent of service for about 22 years. Rest of the Para is not correct as previous laxities already dealt with cannot form basis for punishment.
2. Correct to the extent of filing of Civil Suit before the court of Senior Civil Judge by plaintiff to restrain respondents from construction of BHU on khasra No 2666. But this khasra number was never in dispute, yet khasra No. 2570 was in dispute.
3. Admitted Correct to the extent of application by the plaintiff and to submit report within seven (07) days to the court.
4. Admitted Correct to the extent of complaint of plaintiff against petitioner, yet petitioner had submitted report to the court that the disputed khasra No.2670 and 2632, and not 2666.
5. Not correct. When first reply to the complaint was submitted by petitioner, denying the allegation, then there was no need of subsequent reply. From the subsequent reply, it is crystal clear that he was compelled by the court to admit the allegations of money.

FILED TODAY

Deputy Registrar

29 OCT 2018

Admitted correct. For serving petitioner with Final Show Cause Notice, leaving aside complete procedure of enquiry. When the law requires to do something in a particular manner, the same should be done in that manner and not in any other way.

SCANNED
29 OCT 2018

Akram khan witness produced by the plaintiff is not known to petitioner nor he was seen in the court. Petitioner was not afforded opportunity of cross examination over the same, so his statement cannot be used against him.

Law does not permit to hold subsequent inquiry when no reason was given for rejection of the first inquiry.

07-09. Admitted correct by the respondents regarding submission of affidavits by plaintiff and his special attorney, Mia Rasul Shah that he was not guilty.

10-14. Admitted correct by the respondents as these paras of the petition were not commented upon by them.

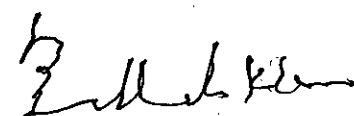
GROUND S:

All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are adopted once again .

It is, therefore, most humbly requested that the Writ Petition be accepted as prayed for.

Petitioner

Through



Saadullah Khan Marwat

Advocate

Dated: 27-10-2018

FILED TODAY
Deputy Registrar
29 OCT 2018

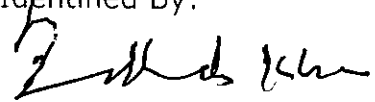
IN THE PESHAWAR HIGH COURT, PESHAWAR


W.P No. 4596/2017

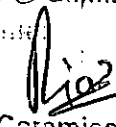
Muhammad Kabir Shah versus District Judge & Others

AFFIDAVIT

I, Muhammad Kabir Shah S/O Hakeem Shah R/O Tarkha Nowshera, do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief.

Identified By:

Saadullah Khan
Advocate,


DEPONENT
CNIC #: 17201-8253190-9
0912-9382743

No:.....	10263
Certified that the above was verified on solemnly affirmation before me in office, this	
day of.....	Oct
at.....	Nowshera
who was identified by.....	Saadullah Khan
Who is personally known to me	
	
Oath Commissioner	
Peshawar High Court, Peshawar.	

FILED TODAY
Deputy Registrar
29 OCT 2018

IN THE PSHAWAR HIGH COURT, PESHAWAR

W.P. No. 4596-P/2017

Muhammad Kabir ShahPetitioner

Versus

District & Sessions Judge, Nowshera and others Respondents

INDEX

S.No.	Description of case	Date	Annexure	Page
1.	Parawise Comments with Affidavit			1-4

Through

Respondent No.2

Khaled Rahman
Advocate,
Supreme Court of Pakistan

Dated: 13.11.2018

FILED TODAY

Deputy Registrar

16 NOV 2018

SCANNED
16 NOV 2018

16/11/18

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. 4596-P/2017

Muhammad Kabir ShahPetitioner

Versus

District & Sessions Judge, Nowshera and others Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.2

Respectfully Sheweth

Preliminary Objections:

- I. That the Petitioner has no locus standi and/or cause of action to file the instant petition as Petitioner has categorically admitted his guilt.
- II. That the factual controversies raised in the writ petition cannot be resolved and/or settled in writ jurisdiction unless and until pro/contra evidence is recorded (said with utmost respect).
- III. That the Petitioner has not referred to and/or pointed out the violation of any statutory provision, which has been violated by the answering Respondent. The Petitioner is not an aggrieved person within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.
- IV. That no vested right of the Petitioner has been infringed, thus the constitutional remedy is not available to the petitioner.
- V. That the Petitioner has not come to the court with clean hands. Apart from other infirmities, the writ petition suffers from gross concealment and mis-statements of facts. The Petitioner is, therefore, not entitled to any relief.
- VI. That the instant petition is not maintainable on the ground that being a matter of terms and condition of services he had to avail the jurisdiction of the Khyber Pakhtunkhwa Service Tribunal under the Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.

FILED TODAY
Deputy Registrar
16 NOV 2018

FACTS:

- 1-3. Need no comments and subject to proof.
4. Incorrect hence denied. As per complaint of one Mr. Shamsheer Ali Khan S/o Sher Ali, resident of Mohallah Zarif Khan, Azakhel Payan, Tehsil & District Nowshera, Petitioner mentioned wrong Khasra Numbers in his Report only to support the other Party and also mislead the Court.
5. Needs no comments.
6. Subject to proof. However, it is submitted that Respondent No.1/D&SJ, Nowshera in the light of complaint of the Complainant constituted a detailed enquiry thereafter, Petitioner was issued Show Cause Notice and the Petitioner in his reply thereto categorically admitted his guilt.
7. Incorrect hence emphatically denied. Petitioner has been dealt with in accordance with law and due process and issued him final Show Cause Notice. Furthermore, in reply to the Show Cause Notice, he conceded his guilt. In spite of the same, Petitioner was fairly tried.
8. Misconceived. It is settled principle of law that compromise has no value until and unless a person has been proved innocent because such compromise bears no legal support.
9. As per admission of the Petitioner, he has been awarded major penalty of removal from service.
- 10-13. Comprehensive reply has already been submitted in the preceding paras.
14. Correct. In light of the admission of the Petitioner, the Departmental Appeal has been rejected being devoid of merits.

FILED TODAY

Deputy Registrar

16 NOV 2018

COMMENTS ON GROUNDS:-

A-C. Incorrect hence vehemently denied. though there was no need to issue Show Cause Notice to Petitioner after his admission but Competent Authority being a responsible authority treated Petitioner as per law and awarded him major penalty.

D&E. Incorrect hence emphatically denied. Petitioner was caught red-handed on the spot in presence of one Mr. Waliullah S/o Hidayatullah and Akram Khan S/o Tajammul Shah by mentioning wrong Khasra Numbers in his report as well as receiving the said money. Rest of the para is misconceived, Petitioner himself conceded that he had received money from both the parties.

F. Needs no comments.

G. Subject to proof.

H&I. Incorrect hence denied. The detail reply has already been given in the above paras.

It is, therefore, respectfully prayed that on acceptance of these Parawise Comments, the writ petition may graciously be dismissed with cost.

Through

Respondent No.2

Khaled Rahman
Advocate,
Supreme Court of Pakistan

Dated: 13.11.2018

FILED TODAY

Deputy Registrar

16 NOV 2018

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. 4596-P/2017

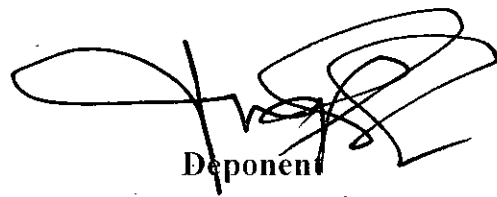
Muhammad Kabir ShahPetitioner

Versus


District & Sessions Judge, Nowshera and others Respondents

AFFIDAVIT

I, **Khawaja Wajeeh-ud-Din, Registrar, Peshawar High Court, Peshawar**, do hereby affirm and declare on oath that the contents of the comments are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Court.


Deponent

15/11

No.....	11947
Certified that the above was verified on solemnly affirmation before me in office, this... 16th	
day of...	Nov 16
at...	Distt. Peshawar
who was identified by...	Sub
Who is personally known to me:	
	
Oath Commissioner	
Peshawar High Court, Peshawar.	

FILED TODAY
 Deputy Registrar
 16 NOV 2018

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 4596/2017

Fixed for 16-01-2019

Muhammad Kabir Shah

versus

District Judge & Others

REJOINDER

Respectfully Sheweth,

Preliminary Objections:

1. Not correct. Petitioner has locus standi and cause of action as his services were terminated for no legal reason. He never admitted the guilt.
2. Not correct. No factual controversy exists because services of petitioner were terminated without following the procedure laid down in the law.
3. Not correct. Petitioner was awarded with major penalty and factual controversy requires pro & contra evidence which is not on the record. Petitioner is aggrieved person within the meaning of Article 199 of the Constitution.
4. Not correct. What is vested rights respondents shall know the same removing from service without following law becomes vested right.
5. Not correct. Petitioner has come to the hon'ble court with clean hands. No facts were ever concealed nor brought on surface by the respondents.
6. Not correct. Petitioner is not a Civil Servant and this hon'ble court has the exclusive jurisdiction in the matter.

ON FACTS

- 1-3. Needs no comments. As the para of the petition is not commented upon by the respondents.

(H) W&B
RECORDED
12 JAN 2019

FILED TODAY
Deputy Registrar
12 JAN 2019

4. Not correct. When petitioner submitted real and correct report to the court which was later on confirmed the report of petitioner to the court by Bailiff Rawait Khan, Girdawar Circle Amjad Ali and Patwari Halqa Amir Khan. The Khasra number which was mentioned by the petitioner was confirmed by the aforesaid incumbents mentioned in the para. Petitioner was awarded penalty for no legal reason but for the ill-will of others.
5. Needs no comments and in first reply petitioner denied taking of the money but he was coursed R. No. 01 to admit the same and thereafter he will be exonerated but fraud was played with him and the District & Session Judge resiled from the commitment of exoneration.
6. As above. No enquiry as per the mandate of law was conducted against petitioner and he was not afforded opportunity of cross examination being mandatory.
7. Not correct. The para of the petition is correct. Rest of the allegation is replied in the proceedings paras regarding admission of guilt.
8. Not correct. The para of the petition is correct when in the first reply petitioner denied the charges then thereafter what happen to admit the same. Para No. 06 of the petition describes the whole truth.
9. Not correct. The law coated in the impugned order is not applied to petitioner case.
- 10-13. In response to theses paras of the petition respondent was legally bound to reply each and every para separately and not jointly. This means that these paras of the petition are admitted correct by the respondents.
14. In response to para No. 14 of the comments it is submitted that no judicial mind was applied to the case of petitioner.

GROUND S:

- a-c. In response to the paras, it is submitted that respondent was legally bound to reply each ground separately but by not doing so, he admitted the grounds of the petition as correct.
- d-e. Not correct. Mr. Walli Ullah is alien to petitioner, he did not record any statement against petitioner what to speak of cross examination. Same is the position of Akram Khan. Petitioner submitted correct report as the matter was pertainting to Khasra number 2670 and not to Khasra number 2666. Petitioner still stand upon the said position.

FILED TODAY
Deputy Registrar
12 JAN 2019

- f. Proof is twenty two (22) years service of petitioner.
- g. Not replied by the respondent to contents of the para of petition. Proof was Bailiff, Patwari Halqa and Girdawar who confirmed the report of petitioner that disputed Halqa was 2670 and not Khasra number 2666, but still petitioner was imposed major penalty of removal from service.
- h-i. Not replied by the respondent so the grounds of the petition are admitted correct by him.

It is, therefore, most humbly requested that the Writ Petition be accepted as prayed for.

Petitioner

Through



Saadullah Khan Marwat

Advocate

Dated: 12-01-2019

FILED TODAY
Deputy Registrar
12 JAN 2019

IN THE PESHAWAR HIGH COURT, PESHAWAR

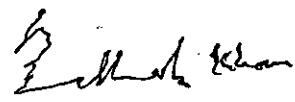
W.P No. 4596/2017

Muhammad Kabir Shah versus District Judge & Others

AFFIDAVIT

I, Muhammad Kabir Shah S/O Hakeem Shah R/O Tarkha Nowshera, do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief.

Identified By:



Saadullah Khan
Advocate,

MKS
DEPONENT
CNIC #: 17201-8253190-9
Cell No. 0312-9322743

No:..... <i>17241</i>
Certified that the above was verified on solemnly affirmation before me in office, this <i>12th</i> day of <i>Jan</i> <i>2019</i> by <i>Muhammad Kabir Shah</i> s/o <i>Hakeem Shah</i> <i>Nowshera</i> who was identified by <i>Saadullah Khan</i>
Who is personally known to me:
<i>AK</i> Oath Commissioner Peshawar High Court

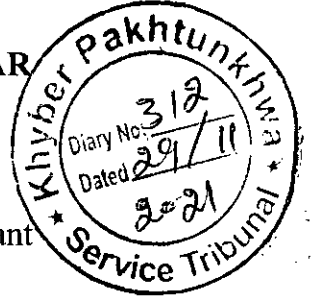
FILED TODAY
Deputy Registrar
12 JAN 2019

date 1-12-21

1

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 15000/2020



Muhammad Kabir Shah Appellant

Versus

District & Sessions Judge, Nowshera and others Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth

Preliminary Objections:

- I. That appellant has been removed from service on 06.06.2017 against which he preferred Department Appeal on 21.06.2017 which was rejected vide appellate order dated 20.10.2017 whereas the appellant has approached this Hon'ble Tribunal in the year 2020, therefore, he was supposed to avail the Provision of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 within 30 days, hence the instant appeal is badly time barred and liable to be dismissed.
- II. That during the course of departmental proceedings, appellant has categorically confessed his guilt before the competent authority, therefore, he was rightly removed from service.

FACTS:

- 1&2. Need no reply and subject to proof.
- 3-5. Incorrect hence denied. As per complaint of one Mr. Shamsheer Ali Khan S/o Sher Ali, resident of Mohallah Zarif Khan, Azakhel Payan, Tehsil & District Nowshera, Appellant mentioned wrong Khasra Numbers in his Report only to support the other Party and also mislead the Court.
6. Subject to proof. However, it is submitted that Respondent No.1/D&SJ, Nowshera in the light of complaint of the Complainant got conducted a detailed enquiry thereafter, Appellant was issued

Show Cause Notice and the Appellant in his reply thereto categorically admitted his guilt.

7. Incorrect hence emphatically denied. Appellant has been dealt with in accordance with law and issued him final Show Cause Notice. Furthermore, in reply to the Show Cause Notice, he conceded his guilt.
8. Misconceived. The compromise has no value and in disciplinary proceedings until and unless a person has been proved innocent he cannot take benefit of subsequent patch-up.
9. As per admission of the appellant, he has been awarded major penalty of removal from service.
- 10-13. Replies have already been submitted in the preceding paras.
14. Correct. In light of the admission of the appellant, the Departmental Appeal has been rejected being devoid of merits.

COMMENTS ON GROUNDS:-

- A-C. Incorrect hence vehemently denied. Though there was no need to issue Show Cause Notice to appellant after his admission but Competent Authority still treated appellant as per law and awarded him major penalty after observing codal formalities.
- D&E. Incorrect hence emphatically denied. Appellant was caught red-handed on the spot in presence of one Mr. Waliullah S/o Hidayatullah and Akram Khan S/o Tajammul Shah by mentioning wrong Khasra Numbers in his report as well as receiving the money. Rest of the para is misconceived, appellant himself conceded that he had received money from both the parties.
- F. Incorrect. Appellant was awarded major punishment on account of his severe misconduct.

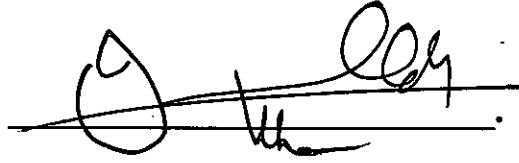
G. Subject to proof.

H&I. Incorrect hence denied. The detail reply has already been given in the above paras.

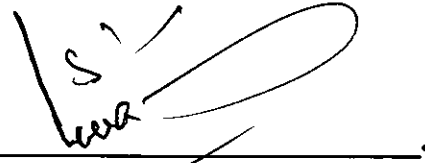
It is, therefore, respectfully prayed that on acceptance of these Parawise Comments, the writ petition may graciously be dismissed with cost.

Respondents

1. **Registrar**
Peshawar High Court,
Peshawar.



2. **District & Sessions Judge,**
Nowshera.



3. **Senior Civil Judge,**
Nowshera.







Dated: ____ .11.2021.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL No 15000/2020

Muhammad Kabir Shah.....Appellant


District & Sessions Judge, Nowshera and others.....Respondent

AFFIDAVIT

I, Muhammad Hanif Senior Civil Judge, Admn Nowshera

do hereby affirm and declare on oath that the content of the Reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon,ble Court.




Senior Civil Judge, Admn
with powers u/s 30 Cr. P.C
Nowshera
Nowshera

ATTESTED

GROUNDS:

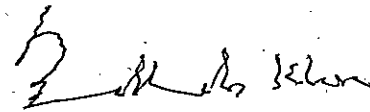
All the grounds of the appeal are correct while that of the reply are incorrect and illegal. The same are reaffirmed.

It is, therefore, most humbly requested that the Appeal be accepted as prayed for.



Appellant.

Through



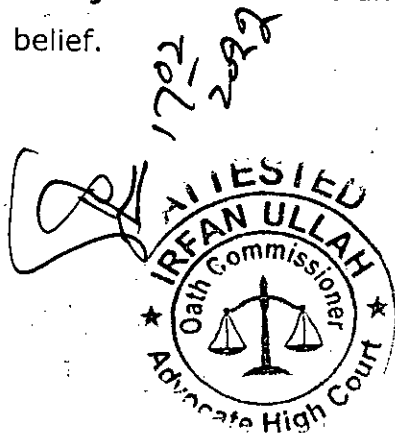
Saadullah Khan Marwat

Advocate

Dated: 17-02-2022

AFFIDAVIT

I, Muhammad Kabir Shah S/O Hakeem Shah R/O Tarkha Nowshera, do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief.




DEPONENT



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 2093 /ST Dated 22/6 /2022

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

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


To:

The District & Session Judge, Nowshera.

SUBJECT:- JUDGMENT IN SERVICE APPEAL NO. 15000/2020, MUHAMMAD KABIR SHAH VERSUS DISTRICT & SESSION JUDGE, NOWSHERA ETC.

I am directed to forward herewith a certified copy of order dated 18.05.2022, passed by this Tribunal in the above mentioned *Service Appeal* for compliance.

Encl. As above.


(WASEEM AKHTAR)
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR.

Time spent is wrong
Forum cannot be condoned.

Appeal Dismissed being
Time Barred.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1592/13

Date of Institution ... 04.12.2013

Date of Decision ... 28.09.2017

Adli

Abdul Malik S/o Muhamamd Hussain R/o Union Council Phulra District
Mansehra.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Local Government,
Election and Rural Development Department and 4 others.

... (Respondents)

MR. NIAZ ALI KHAN,
Advocate

... For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the
learned counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from the impugned order dated 03.09.2012 whereby he was removed from service due to his absence from service. The appellant then filed a departmental appeal with no date. The same was rejected on 23.04.2013. Thereafter the appellant filed a writ petition before the worthy Peshawar High Court, Peshawar which was dismissed on 01.10.2013 on the

ground of jurisdiction. Thereafter the appellant filed the present appeal on 04.12.2013. The appellant has also filed an application for condonation of delay.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant did not commit willful absence but was ill and was admitted in the hospital. He referred to admission record of the concerned hospital. He further argued that the limitation may be condoned as the appellant has pursued his case before the wrong forum before the Peshawar High Court, Peshawar.

4. On the other hand learned Deputy District Attorney argued that no illegality has been committed by the department in whole proceedings. That the appellant was provided opportunity of personal hearing both at the stage of departmental proceedings as well as at the stage of departmental appeal. That the appeal is hopelessly time barred and no condonation can be granted in view of the judgment reported as 2010 SCMR 1982 in which it has clearly been held that the limitation is not always a matter of technicality.

CONCLUSION.

5. The present appeal is clearly time barred as is admitted by the appellant by filing application for condonation of delay. It is to be seen whether it is a fit case for condonation of delay. In view of the judgment of the august Supreme Court of Pakistan in its judgment entitled "*Khushi Muhammad etc. Vs. Mst. Fazl Bibi etc.*" reported as 2016-SCMR-872 in which it has been finally held that time spent in wrong forum on the basis of wrong advice or even on the principle of *actus curiae neminem gravabit* cannot be condoned this appeal is therefore time barred. The merit of the case therefore ~~NEED~~^{need} not be discussed and the appeal is

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

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

(AHMAD HASSAN)
MEMBER

ANNOUNCED
28.09.2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1156/2017

Date of Institution ... 13.10.2017

Date of Decision ... 15.02.2021



Shah Room Ex-Naib Qasid, District Court, Nowshera. ... (Appellant)

VERSUS

District & Sessions Judge, Nowshera. ... (Respondent)

Present.

Mr. Javed Iqbal Gulbela,
Advocate.

... For appellant

Syed Asif Masood,
Deputy District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,
MIAN MUHAMMAD,

... CHAIRMAN
... MEMBER(E)


JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant had submitted an application for impleadment of Administrative Judge, Peshawar High Court (Appellate Authority) as a respondent. On 25.11.2020, reply to the application was submitted by learned Addl. AG on behalf of the respondent. Learned counsel, however, does not press the application today. The same is disposed of accordingly.

2. The appellant has preferred instant appeal questioning the order dated 01.06.2017 passed by the respondent/Worthy District & Sessions Judge, Nowshera. Through the impugned order, the appellant was removed from service. As per the claim of appellant, he submitted a departmental

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal


appeal against the impugned order which could not prevail. The submission of departmental appeal was though outrightly denied by the respondents.

3. As found from the memorandum of appeal, the appellant was inducted into service as Naib Qasid after going through the requirements necessary for the purpose of recruitment. During the course of service, he was proceeded against for misconduct on account of receiving money from one Ghafoor son of Hussain Badshah resident of Hangu. During departmental proceedings, the appellant was issued a show cause notice on 15.03.2017 containing the allegation(s) against him. A reply to the show cause notice was duly submitted. Upon the conclusion, the impugned order dated 01.06.2017 was passed. Departmental appeal against the order was submitted which remained unattended, hence the appeal in hand.

4. Learned counsel for the appellant as well as learned Deputy District Attorney heard and available record thoroughly gone through.

5. It was argued by learned counsel that no proper enquiry against the appellant was ever conducted nor any order regarding the dispensing with the enquiry was found on the record. That, only show cause notice was issued to the appellant while the issuance of charge sheet, as well as statement of allegations, was done away with. Referring to the statements recorded by learned Judicial Magistrate-II Nowshera, it was contended that those were contradictory in nature, therefore, could not be used against the appellant. The appellant was never provided with any opportunity to cross-

ATTESTED

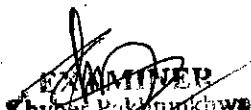

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

examine the witnesses, it was added. The impugned order was not sustainable on account of submissions made on behalf of the appellant.

Learned DDA, while responding to the arguments from other side, contended that the appeal in hand was not maintainable for the reason that the appellant did not file any departmental appeal. He also referred to Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 to strengthen his argument. Learned DDA further contended that the facts admitted need not require to be proved. He referred to the statement of appellant, wherein, the receipt of tainted money was allegedly admitted by the appellant. In support of his arguments, learned DDA relied on judgments reported as 1993 SCMR 956, 2005 SCMR 824 and PLD 1994 Supreme Court 222.

6. Adverting to the question regarding submission of departmental appeal by the appellant, it is found that a departmental appeal was submitted by the appellant on 14.06.2017, copy whereof is duly available on the record. It is, however, conspicuous from contents of appeal that the same was addressed to the learned District & Sessions Judge, Nowshera, the authority that had passed the impugned order dated 01.06.2017, against the appellant. An order dated 02.10.2017, is alongside available on record. The order was passed by the sole respondent/District & Sessions Judge, Nowshera in terms that an accused who had been awarded penalty under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, may within thirty days from the date of communication of the order, prefer departmental appeal to the Appellate Authority. The order was concluded to

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

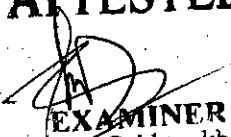
dismiss the appeal. The appellant was, however, left at liberty to approach the proper forum.

It does not only become clear that the appellant had submitted a departmental appeal but also that the respondent failed to communicate the appeal to the competent authority for which he was obligated under the rules. The treatment meted out to the appeal of appellant was not in accordance with law, it is hereby held.

7. On the record, it is also available that learned Judicial Magistrate-II Nowshera, recorded statement of some witnesses who were never exposed to cross-examination by the appellant. Moreover, any document regarding the mandate of learned Judicial Magistrate-II Nowshera, in that respect was ever made available before this Tribunal. It is also not supported by the record that the said officer was even appointed as an enquiry officer. Here, it becomes pertinent to note that the appellant was not provided/served with statement of allegations or the charge sheet. In the circumstances, it can be safely held that the respondent failed to cause the holding of proper enquiry, that too, in a case where major penalty was awarded to the accused. It is iterated that no order for dispensing with the holding of regular enquiry was ever made by the competent authority.

8. For the foregoing, it is held that departmental proceedings against the appellant were undertaken in a casual manner leaving different loopholes. Proper attempt was not made in order to collect material/evidence against


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the appellant regarding charge(s) of highly serious nature. The impugned order is, therefore, not sustainable.

Ex-consequencia, the order dated 01.06.2017, passed by the respondent, is set aside upon acceptance of the appeal. He is reinstated into service with the option to the respondents for conducting proper/denovo enquiry against him. The denovo proceedings shall be completed within ninety days of the receipt of copy of instant judgment. The award of back benefits, in favour of appellant, shall be subject to the outcome of proper/denovo enquiry. Needless to note that the appellant shall be extended fair opportunity of defending his cause in addition to cross-examining the witnesses, if any, appearing during the departmental proceedings.

Parties are, however, left to bear their respective costs. File be consigned to the record room.



(MIAN MUHAMMAD)
MEMBER(E)



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
15.02.2021

Certified to be true copy

FACILITATOR
Khyber Pakhtunkhwa
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