


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	23.12.2015	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.1169/2014</p> <p style="text-align: center;">(Siraj Mohammad-vs-Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>ABDUL LATIF, MEMBER:</u></p> <p>Appellant with counsel (Mr. Mohammad Asif Yousafzai, Advocate) and Mr. Mukhtiar Ali, Supdt alongwith Mr. Muhammad Jan, GP for respondents present.</p> <p>2. The instant appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974 against the impugned order dated 04.08.2014 whereby major penalty of compulsory retirement was imposed on the appellant and against the appellate order dated 10.09.2014 whereby the departmental appeal of the appellant has been rejected. He prayed that on acceptance of this appeal the impugned orders dated 04.08.2014 and 10.09.2014 may very kindly be set aside and the respondents may be directed to reinstate the appellant with all back benefits.</p> <p>3. Brief facts giving rise to the instant appeal are that the appellant was serving as Patwari (BPS-09). That appellant while working as</p>

		<p>Patwari at Patwar Halqa Rashida a so called fact finding was conducted by the respondent-department against the appellant on the allegation that appellant has received illegal gratification of Rs. 1,40,000/- from complainant Mr. Abdul Ghani S/o Sher Ali on account of attestation of mutation No. 4836 dated 27.08.2013 and demanded further Rs. 2,00,000/. That on the basis of the so called fact finding inquiry the appellant was charge sheeted alongwith statement of allegation on the said issue. The appellant submitted his detailed reply and denied the allegation with documentary proof. That there-after the appellant was served with show cause notice to which the appellant submitted his reply and denied the allegation but due to one sided inquiry the appellant was declared/held guilty for the said act which the appellant have not committed. That though the inquiry committee recommended minor punishment for the appellant but in spite of that vide impugned order dated 04.08.2014 the respondent No.3 imposed major punishment of compulsory retirement on the appellant. That the appellant preferred departmental appeal which was rejected on 10.09.2014, hence the instant appeal.</p> <p>4. The learned counsel for the appellant argued that impugned orders dated 04.08.2014 and 10.09.2014 were against the law, facts, norms of natural justice and materials on record, hence not tenable. That the respondents had not treated the appellant in accordance with law and rules and as such they violated Article-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that no chance of cross examination of complainant and witness was given to the appellant, presence of complainant was not ensured and opportunity of personal hearing was also not provided to the appellant before passing of the impugned order. He further contended that enquiry committee</p>
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recommended minor penalty but inspite of the same, major penalty was imposed on the appellant which showed malafide on the part of respondents. He further argued that statement of appellant was taken under duress and that the appellant committed no offense nor was any evidence in support of the same available, the impugned orders were thus unlawful and prayed that on acceptance of this appeal the said orders may be set aside and appellant may be reinstated in service with all back benefits.

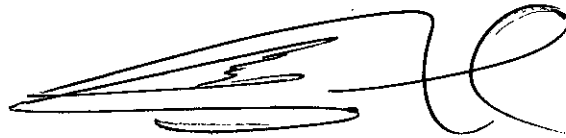
5. The learned Government Pleader resisted the appeal and argued that full-fledged enquiry was conducted on the charge of taking of bribes of Rs. 140,000/- by enquiry committee wherein the charge was established. The appellant himself admitted the charge and returned the bribe money to the complainant in the presence of witnesses which left no room for any doubt about the charges. The appellant was provided full opportunity of defense and was also heard in person before imposition of the penalty; the orders was therefore lawful and prayed that the appeal being devoid of any merits may be dismissed.

6. Arguments of learned counsels for the parties heard and record perused with their assistance.


7. From perusal of the record, it transpired that the appellant was proceeded against under the Govt: of Khyber Pakhtunkhwa (E&D) Rules, 1973 for the charges of taking illegal gratification of Rs. 140,000/- for registration of mutation No. 4836 in favor of complainant Abdul Ghani which was duly established during the course of the fact finding enquiry and a regular enquiry conducted through an enquiry committee.

ATI

The charge was established beyond an iota of doubt as the appellant returned the same amount of illegal gratification in the presence of witnesses. Though the enquiry committee recommended imposition of minor punishment, yet the competent authority while deciding the case imposed major penalty of compulsory retirement which seems commensurate to the established charges. The Tribunal is of the considered view that competent authority has already taken a lenient view while passing orders of major penalty of retirement on the appellant who has failed to make out a case for interference by this Tribunal. In the circumstances, the appeal being devoid of any merits is dismissed. Parties are left to bear their own costs. File be consigned to the record.



(PIR BAKHSH SHAH)
MEMBER

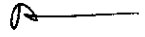


(ABDUL LATIF)
MEMBER

ANNOUNCED
23.12.2015

20.10.2015

Counsel for the appellant and Addl: A.G for respondents present. The learned Member (Judicial) is on leave therefore, case is adjourned to 18-11-15 for arguments.



Member

18.11.2015

Appellant with counsel and Mr. Mukhtiar Ali, Supdt. alongwith Mr. Muhammad Jan, GP for respondents present. Arguments heard. To come up for order on 15-12-2015.



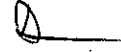
MEMBER



MEMBER

15.12.2015

Appellant in person and Mr. Muhammad Jan, GP for respondents present. The learned Member (judicial) is on leave therefore, order could not be announced. To come up for order on 23.12.2015



MEMBER

10.06.2015


Appellant in person and Mr. Mukhtiar Ali, Supdt alongwith Muhammad Jan, GP for the respondents present. Appellant requested for adjournment. To come up for arguments on 15.07.2015.


MEMBER


MEMBER

15.07.2015

Mr. Noor Muhammad Khattak, Advocate for appellant present and submitted that co-counsel for the appellant (Mr. Muhammad Usman Turlandi, Advocate) is not available and request made on his behalf for adjournment. Mr. Ziaullah, GP with Mukhtiar, Supdt for the respondents present. Case is adjourned to 01-12-2015 for arguments.


Member


Member

21.09.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Request accpeted. To come up for arguments on 20-10-2015.


Member

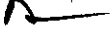

Member

Appeal No. 1169/2014
Mr. Saad Muhammad

12.01.2015

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 04.08.2014, vide which the major penalty of compulsory retirement has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 07.08.2014 which was rejected vide order dated 10.09.2014, hence the instant appeal on 23.09.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 30.03.2015.


Member

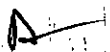
30.3.2015

Appellant with counsel and Mr. Ziaullah, GP with Muhammad Ayub Khan, Assistant for respondents No. 2 & 3 present and reply filed. Copy handed over to counsel for the appellant. Mr. Mukhtiar Ali, Supdt. for respondent No. 1 requested for further time. To come up for written reply of respondent No. 1 on 23.4.2015.


MEMBER

23.04.2015

Appellant in person and Mr. Mir Qasim Khan, Assistant Secretary alongwith Asstt: AG for the respondents present. Appellant filed Wakalat Nama of Muhammad Usman Khan Turlandi, Advocate. Written reply on behalf of respondent No.1 submitted. The appeal is assigned to D.B for rejoinder and arguments on 10.06.2015 before D.B.


Member

Appellant Appointed Process fee
a Security

S.

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27.10.2014

Counsel for the appellant present and filed an application for early hearing. Case file requisitioned. Application allowed. To come up for preliminary hearing on 01.12.2014 instead of 16.12.2014.


Member

Reader Note:

01.12.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 16.12.2014 for the same.


Reader

Reader Note:

16.12.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 06.01.2015 for the same.


Reader

Reader Note:

06.01.2015

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned 12.01.2015 for the same.


Reader

4.



5.

6.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1169 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/09/2014	<p>The appeal of Mr. Siraj Muhammad presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	30-9-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>16-12-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1169 /2014

SIRAJ MOHAMMAD

VS

GOVT: OF KPK

INDEX

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APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1169 /2014

No. 1206
23/9/2014

Mr. Siraj Mohammad, Ex: Patwari (BPS-09),
Patwar Halqa Rashida, District Peshawar **Appellant**

VERSUS

- 1- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
 - 2- The Commissioner Peshawar Division at Peshawar.
 - 3- The Deputy Commissioner Peshawar, District Peshawar.
- **Respondents**

APPEAL UNDER SECTION- 4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 4.8.2014 WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT WAS IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 10.9.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 4.8.2014 and 10.9.2014 may very kindly be set aside and the respondents may be directed to reinstate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of appellant.

R.SHEWETH:

ON FACTS:

- 1- That appellant is the employee respondent Department and has served the respondents Department as patwari (BPS-09) for quite considerable time quite efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while working as patwari at patwar halqa rashida a so called fact finding was conducted by the respondent Department against the appellant on the allegation that appellant has received illegal gratification of Rs.1, 40,000/- from Complainant Mr. Abdul Ghani S/o Sher Ali on account of attestation of mutation No.4836 dated 27.8.2013 and demanded further Rs.2,00,000/-.

re-submitted to the
and filed.

23/9/14

- 3- That the appellant was pulled forcibly under severe pressure and undue duress to sign a deed which was blindly got signed by the appellant and thus the appellant put the wording UP under his signature denoting "under pressure" where the appellant has never confessed the guilt whatsoever as the appellant committed no omission, illegality or irregularity whatsoever there is no fault on his part nor any evidence is /was available against the appellant. Copy of the deed is attached as annexure..... **A.**
- 4- That after the so called fact finding inquiry the appellant was charge sheeted along with statement of allegation on the said issue. That appellant submitted his detailed reply and denied the allegation with documentary proof. Copies of the charge sheet, statement of allegation and reply are attached as annexure..... **B, C and D.**
- 5- That then after the appellant was served with show cause notice to which the appellant submitted his reply and denied the allegation but due to one sided inquiry the appellant was declared /held guilty for the said act which the have not committed. That it is very pertinent to mentioned that the inquiry committee recommended minor punishment for the appellant. Copies of the show cause notice, reply and inquiry report are attached as annexure..... **E, F and G.**
- 6- That though the inquiry committee recommended minor punishment for the appellant but in spite of that vide impugned order dated 4.8.2014 the respondent No.3 imposed major punishment of Compulsory retirement on the appellant. Copy of the impugned order is attached as annexure..... **H.**
- 7- that feeling aggrieved the appellant filed Departmental appeal before the respondent No.2 but the same was rejected on 10.9.2014. Copies of the Departmental appeal, comments and rejection order are attached as annexure..... **I, J and K.**
- 8- That having no other remedy the appellant filed the present appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned orders dated 4.8.2014 and 10.9.2014 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

- B- That the appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Pakistan 1973.
- C- That no chance of personal hearing/defence was given to the appellant before issuing the impugned order dated 4.8.2014 against the appellant.
- D- That no regular inquiry has been conducted in the matter which is as per Supreme Court judgments is necessary in punitive actions against the Civil servant.
- E- That no chance was provided to the appellant to cross examined the complainant and his witnesses, therefore the inquiry is legally defective being one sided.
- F- That the inquiry committee has only gone through a written complaint and did not pressurized the complainant to ensure his presence and thus the evidence so collected by the inquiry committee do not warrant professional misconduct, even then, they recommended the case for minor penalty.
- G- That the appellant was pulled forcibly under severe pressure and undue duress to sign a deed which was blindly got signed by the appellant and thus the appellant put the wording UP under his signature denoting "under pressure" where the appellant has never confessed the guilt whatsoever as the appellant committed no omission, illegality or irregularity whatsoever there is no fault on his part nor any evidence is /was available against the appellant.
- H- That the respondents acted in arbitrary and malafide manner while issuing the impugned orders dated 4.8.2014 and 10.9.2014 against the appellant.
- I- That appellant seeks permission to advance other grounds and proofs at the time of haring.

APPELLANT

SIRAJ MOHAMMAD

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

حلیہ بیان

سراج محمد بنواری حلقہ ریزروہ نے حلقا بیان کیا کہ میں
 عرصہ تقریباً 15 ماہ سے اس دروغ پر کام کر رہا ہوں
 انتقال نمبر 4838 درج S 27 کو میں نے حسب واقعہ
 کے کہنے پر عبدالمصطفیٰ کے نام درج کیا۔ انتقال مذکورہ کے
 انبیاء کے سے ہیں، میں نے عبدالمصطفیٰ کی طرف سے
 گھرا رشاد امہ الزرقان کے پاس 1,40,000 روپے وصول
 کیے تھے۔ یہی رقم آج میں نے اپنے بیٹے ناصر گھرا
 کے پاس ڈنگواٹر DC کے دفتر میں DC
 امہ ڈنگر کو ایمان کی موجودگی میں والیسی کرتا ہوں
 منجھ سے غلطی ہوئی ہے سہمی دی جائے اللہ اعلم

گھرا رشاد
 امہ رشاد
 امہ رشاد

میں نے سب سے پہلے گھرا رشاد کی دہائی کی۔
 گھرا رشاد کی دہائی کی۔
 میں نے گھرا رشاد کے خانہ نمبر 13 کی قیمت کے مطابق گھرا رشاد کی دہائی کی۔
 حلیہ بیان

گھرا رشاد
 امہ رشاد
 امہ رشاد

ATTESTED

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CHARGE SHEET

B-5

I, S. Zaheer-ul-Islam, Deputy Commissioner, Peshawar as competent authority, hereby charge you, Mr. Siraj Muhammad, Patwari Halqa Rashida, Peshawar (Under suspension), as follows:-

That you, while posted as Patwari Halqa Rashida Peshawar committed the following irregularities:

- (a) That as per complaint lodged by Mr. Abdul Ghani S/o Sher Ali r/o Bahadar Khel Dursamand, District Hangu, for receiving illegal gratification of Rs. 1,40,000/- by you for Attestation of Mutation No.4838 dated 27-08-2013 and demanded further amount of Rs.2,00,000/- and due to non-payment of additional amount the Mutation in question has been cancelled on 05/12/2013.
- (b) You were suspended vide this office order No. 18886-92 /DC(P) dated 28/11/2013 and a preliminary inquiry was ordered against you vide No.20542/DC(P)/EA dated 10/12/2013 and Mr.Asad Haroon Assistant Commissioner Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer Mr.Asad Haroon, Assistant Commissioner Peshawar in his report recommended that you were found guilty for receiving illegal gratification of Rs.1,40,000/- from the complainant and clear breast confession of the said amount and returned the same through your written affidavit in the presence of Inquiry Officer.
- (d) That Inquiry Officer concerned has recommended for major penalty of Dismissal from service under E&D Rules 2011.

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

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Inquiry Committee.

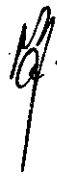
4. Your written defense, if any, should reach the Inquiry Committee, within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A Statement of allegations is enclosed.


Deputy Commissioner
Peshawar
(COMPETENT AUTHORITY)

ATTESTED



DISCIPLINARY ACTION

C-6

I, S. Zaheer-ul-Islam, Deputy Commissioner Peshawar, as competent authority, am of the opinion that Mr. Siraj Muhammad, Patwari Halqa Rashida, Peshawar (Under suspension), has rendered liable to be proceeded against, as he committed the following acts/omissions with in the meaning of rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS


- (a) That as per complaint lodged by Mr. Abdul Ghani S/o Sher Ali r/o Bahadar Khel Dursamand, District Hangu, for receiving illegal gratification of Rs. 1,40,000/- by you for Attestation of Mutation No.4838 dated 27-08-2013 and demanded further amount of Rs.2,00,000/- and due to non-payment of additional amount the Mutation in question has been cancelled on 05/12/2013.
- (b) You were suspended vide this office order No.18886-92/DC(P)/DK dated 28/11/2013 and a preliminary inquiry was ordered against you vide No.20542/DC(P)/EA dated 10/12/2013 and Mr.Asad Haroon Assistant Commissioner Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer Mr.Asad Haroon, Assistant Commissioner Peshawar in his report recommended that you were found guilty for receiving illegal gratification of Rs.1,40,000/- from the complainant and clean breast confession of the said amount and returned the same through your written affidavit in the presence of Inquiry Officer.
- (d) That Inquiry Officer concerned has recommended for major penalty of Dismissal from service under E&D Rules 2011.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules.

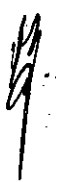
- i. Mr. Mahmood Ahmed
- ii. Mr. Abdul Nabbi

3. The inquiry committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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


Deputy Commissiонер
Peshawar
(COMPETENT AUTHORITY)

ATTESTED



Before the worthy Add; Assistant Commissioner-I Peshawar/ inquiry officer.

Reference is made to the official order/ letter bearing no. 178/DC (P)/EA Peshawar the 06/01/2014, subject. Disciplinary proceedings against Siraj Muhammad Patwari Halqa Rashida Peshawar.

Written defense/Reply to the charge sheet/statement of allegation.

PRAYERS.

In compliance with the orders referred to above and the charge sheet duly served upon me dated 07/01/2014, I, beg to submit my written defense/reply regarding my innocence and seeking thereto exoneration from the charges/allegation leveled against me with a humble request to file the same without any further disciplinary action please.

Respected Sir,

1. That I have served the esteemed department as patwari under your kind command/control for along considerable period and have performed spotless services with great zeal, zest and enthusiasm and have no immoral record in my past nor I ever been convicted.
2. That in the light of Para-a of the charge sheet and as per alleged complaint so submitted by one Abdul Ghani, stating therein that an amount of rupees 1, 40,000/- was paid as an illegal gratification for the attestation of mutation No. 4838 dated 27-08-13 and on refusal of further payment of rupees 2, 00,000/-, the said mutation was not yet attested is totally wrong, incorrect and frivolous. Had I received any illegal gratification, the mutation in question would have been attested positively at any cost and the matter would not left lingering-on for my shameful disgrace and to record such professional misconduct. Actually the amount of rupees 1, 40,000/- was the revenue tax while the remaining portion of revenue tax was yet to be deposited. As for as my statement is concerned, your honour is well aware of the fact that the statement was forcibly signed by me under severe pressure, Duress and compulsion, I therefore, under my signature put the word "UP" (abbreviating/representing the word under pressure).
3. That as for as, Para-b of the charge sheet/ statement of allegation is concerned, in the preliminary inquiry, I was neither charge sheeted nor any statement of allegation was served upon me and even I have not been given a chance of my defense, only I was forcibly asked with a high degree of pressure/duress and my sign was procured on a statement/affidavit under pressure.
4. That in reply to Para-c, it is respectfully submitted, that keeping in view the defense reply to Para-b, such under pressure statement and to procure the signature under pressure is in utter disregard of the law on the subject and such statement cannot be taken as a substantive piece of evidence

ATTESTED

[Signature]

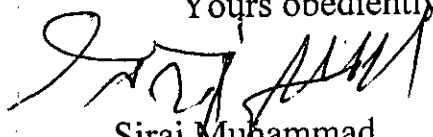
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and cannot be called a voluntary confession. As stated above, the amount of rupees 1, 40,000/- was the revenue tax and when the mutation was not attested it was to return to the payee, hence there was no illegality much less irregularity.

5. That the recommendation so envisaged in Para -d of the charge sheet is concerned, with due respect, in the preliminary inquiry, the recommendation for major penalty of dismissal without fulfillment of the codal formalities and without hearing of the accused was just passed on presumption, surmises and conjecture which is against not only the law of land but even against the law of the natural justice.
6. That the petitioner/accused has committed no offence, professional misconduct, illegality or irregularity whatsoever and there is no fault on his part rather he has been made a scapegoat between the two rival parties whereas the matter now, has been patched up between both the parties inter-se and now, both the parties have no any objection against the accused by exonerating him from the charges.
7. That the petitioner is a peaceful law abiding person, belongs to a very poor and respectable family having a large family to support including an ailing daughter, suffering from a disease known as Thalassemia (Blood Cancer) and such baseless allegation would definitely cause his mental and physical torture beside a sudden economical/financial death.
8. That the petitioner would otherwise be satisfied if your honour is pleased to bestow a chance of personal hearing in the matter in hand.

It is, therefore, humbly prayed that on acceptance of this defense reply, the petitioner may very graciously be exonerated from the charges leveled against him and the charge sheet/statement of allegation may very graciously be filed without any further disciplinary action please. I shall pray for your long life and prosperity.

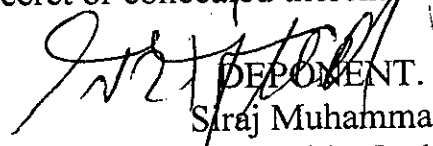
Yours obediently;


Siraj Muhammad
Patwari Halqa Rashida, Peshawar.

Dated; 13-01-2014.

AFFIDAVIT.

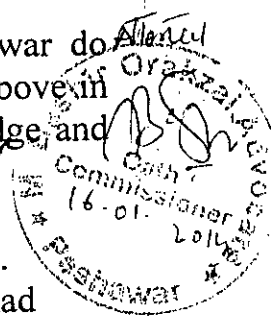
I, Siraj Muhammad Patwari Halqa Rashida, Peshawar do hereby affirm and declare on oath that what aever sated above in my defence reply are true and correct to the best knowledge and belief and nothis has been kept secret or concealed therein.


DEPONENT.
Siraj Muhammad
Patwari Halqa Rashida, Peshawar

Dated; 13-01-2014.

ATTESTED





SHOW CAUSE NOTICE

E-9


I, S. Zaheer-ul-Islam, Deputy Commissioner Peshawar, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Discipline Rules 2011, do hereby serve you, Siraj Muhammad, Patwari Halqa Rashida (under suspension), as follows:


1. (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Committee for which you were given opportunity of hearing vide office communication which was availed by you and
- (ii) On going through the findings and recommendations of the Inquiry Committee, the material on record and other connected papers.

I am satisfied that you have committed the following acts /omissions specified/falls under the purview of Section 3 of the said Ordinance:

- (a) That as per complaint lodged by Mr. Abdul Ghani S/o Sher Ali r/o Bahadar Khel Dursamand, District Hangu, for receiving illegal gratification of Rs. 1,40,000/- by you for Attestation of Mutation No.4838 dated 27-08-2013 and demanded further amount of Rs.2,00,000/- and due to non-payment of additional amount the Mutation in question has been cancelled on 05/12/2013.
 - (b) You were suspended vide this office order No.18886-92/DC(P)/DK dated 28/11/2013 and a preliminary inquiry was ordered against you vide No.20542/DC(P)/EA dated 10/12/2013 and Mr.Asad Haroon Assistant Commissioner Peshawar was appointed as Inquiry Officer.
 - (c) That the Inquiry Officer Mr.Asad Haroon, Assistant Commissioner Peshawar in his report recommended that you were found guilty for receiving illegal gratification of Rs.1,40,000/- from the complainant and clean breast confession of the said amount and returned the same through your written affidavit in the presence of Inquiry Officer.
 - (d) That Inquiry Officer concerned has recommended for major penalty of Dismissal from service under E&D Rules 2011.
 - (e) That an inquiry committee comprising of M/s Abdul Nabi AAC-I and Mahmood Ahmad AAC-VI Peshawar was constituted to thoroughly investigate the matter.
 - (f) The Inquiry Committee in its report recommended for imposing a minor penalty under E & D Rules 2011.
2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you Major Penalty of compulsory retirement under section-4 of the said Rules.
3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within fifteen days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put in and in that case an exparte action shall be taken against you.
5. The copy of the findings of the Inquiry Committee is enclosed.

U.O.No. 4651-A /DC (P)/EA.
Dated 30 /04/2014.


Deputy Commissioner
Peshawar
(Competent Authority)

ATTESTED


F-10

BEFORE THE WORTHY DEPUTY COMMISSIONER PESHAWAR.

In reference to the official letter No. 4651/DC (P)/EA Dated Peshawar the 30-04-2014, Title "SHOW CAUSE NOTICE", communicated to the petitioner on 06-05-2014.

REPLY TO THE SHOW CAUSE NOTICE.

I, Siraj Muhammad Patwari, Halqa Rashida, Peshawar, beg to submit my reply to the show cause notice for your kind and sympathetic consideration with the hope of mercy keeping in view my unblemished long span of service and being a low-paid subordinate under your kind command and control beside the fact of chronic ailing of my children.

My Parawise reply is as under:

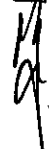
- 1) (i) The inquiry was conducted and I was given an opportunity of hearing but no chance of cross examining the complainant was arranged as the presence of the complainant was not forced/secured and thus the inquiry was legally defective being one sided.
- (ii) The inquiry committee has only gone through a written complaint and did not pressurize the complainant to ensure his presence and thus the evidence so collected by the enquiry committee do not warrant professional misconduct, even then, they recommended the case for minor penalty.

Respected Sir, I have committed no omission, illegality or irregularity whatsoever and there is no any fault on my part as is no such evidence available on file.

- a) The complainant has not alleged that he has ever given any sort of bribe or illegal gratification directly to the petitioner rather he admits that some third person has defrauded him by using my name. For the sake of my reply, if it is presumed that I have accepted bribe or illegal gratification from complainant then what was the logic to bring him in litigation by not extending him illegal cooperation. The allegations are totally incorrect, frivolous and fabricated one. Had it been correct, the complainant must be presented personally before the inquiry committee to support his stance.

- b) Sir, it pertains to the record please.

ATTESTED



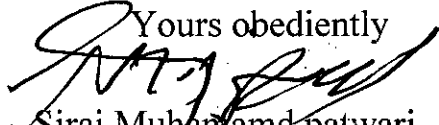


- c) Sir, I was pulled forcibly under severe pressure and undue duress to sign a deed which was blindly got signed by me with the wording UP denoting "under pressure" whereas I have never confessed the guilt whatsoever as I have committed no omission, illegality or irregularity whatsoever and there is no any fault on my part as is no such evidence available on file.
- d) That the honorable enquiry officer might have recommended the case for major penalty but his findings and subsequent recommendation are not in consonance with the findings and recommendation of the enquiry committee. The enquiry proceedings were initiated and concluded in absence of the complainant and thus a novel procedure has been adopted and the innocent low paid Government has been penalized on a simple complaint without touching the complainant whereas no evidentiary value could be given to such like anonymous complaint.
- e) Sir, it pertains to the record please.
- f) Sir, it is very much astonishing that the recommendations made by the honorable enquiry officer and the honorable enquiry committee are contradictory inter-se, the benefit of such contradiction can be extended to the petitioner and the petitioner may please be exonerated from the charges leveled against me.
- 2) As I am innocent and has falsely been implicated in the instant departmental proceedings keeping in view my spotless and unblemished long span of service and being a low-paid subordinate under your kind command and control besides the fact of chronic ailing of my children the complaint may please be filed without further action please.
- 3) Sir, I would be satisfied if a personal hearing is bestowed upon me in case my written reply is found not satisfactory.

It is therefore humbly prayed that in view of the aforesaid facts and circumstances and entire proceedings of the enquiry committee coupled with no interest of the complainant in the matter, my case may very kindly be filed by exonerating from the charges leveled against me. I shall pray for your long life and prosperity.

ATTESTED

Dated: 08-05-2014

Yours obediently

Siraj Muhammad patwari
Halqa Rashida Peshawar.

DISCIPLINARY PROCEEDINGS AGAINST MR.SIRAJ MUHAMMAD,
PATWARI HALQA RESHIDA PESHAWAR (UNDER SUSPENSION).

G-12

INQUIRY REPORT

The competent authority/worthy Deputy Commissioner Peshawar vide letter No.178/DC(p)/EA, dated 06/01/14 has been appointed Inquiry Committee consisting Mr. Abdul Nabi AAC-I and Mr. Mahmood Ahmad AAC-VI to scrutinize the conduct of the aforesaid accused official vis-à-vis the statement of allegations and submit its findings/recommendations and report in accordance with the provisions of Govt Servants Efficiency and Disciplinary Rules,2011. The D.K of the office of the Deputy Commissioner has also been directed to be present during the inquiry proceedings. The accused has received the statement of allegation and Charge sheet through DK of this office. He has also been directed to appear before the Inquiry Committee on the date and time fixed by the Committee during Inquiry proceedings.

The statement of allegations are as Under :-

- (a) That as per complaint lodged by Mr.AbdulGhani S/O Sher Ali r/O Bahadar Khel Dursamand, District Hangu for receiving illegal gratification of Rs.1,40,000/- by you for attestation of Mutation No.4838, dated 27/08/13 and demanded further amount of Rs.200000/- and due to non payment of the additional amount , the mutation in question has been cancelled on 5/12/13.
- (b) You were suspended vide this office order No.18886-92/DC(P)/DK dated 28/11/13 and a preliminary inquiry was ordered against you vide No.20542/DC(P)/EA dated 10/12/13 and Mr.Asad Haroon Assistant Commissioner Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer Mr.Asad Haroon, Assistant Commissioner Peshawar in his report recommended that you were found guilty for receiving illegal gratification of Rs.140000/- from the complainant and clean breast confession of the said amount and returned the same through your written affidavit in the presence of Inquiry Officer.
- (d) That Inquiry Officer concerned has recommended for major penalty of Dismissal from Service under E & D Rules 2011.

It is pertinent to mention here that in the preliminary Inquiry all the concerned i.e the complainant Abdul Ghani, the two witnesses Mr.Muhammad Anwar and Muhammad Irshad, the accused patwari Siraj Muhammad and his son Amir Shehzad have been properly summoned and heard in person and their statement to this effect has also been recorded by the Inquiry Officer, copies of which are available on the Inquiry file.

Both the witnesses Mohammad Anwar and Muhammad Irshad in their statements have upheld the version of the complainant that he had given the amount of Rs.140000/- as illegal gratification to the accused patwari through them for attestation of mutation in question. The accused patwari and his son in their written statement recorded before the Inquiry Officer/Assistant Commissioner have also admitted the receipt of Rs.140000/- through the above mentioned witnesses as illegal gratification for the attestation of the mutation No.4838. The accused has also returned the said amount to the complainant

(Cont: P2)

ATTESTED

[Signature]

[Signature]

[Signature]

Attested
Sahar
Supdt
Deputy Commissioner
Peshawar

which he had taken as illegal gratification through a recovery memo and the complainant has also admitted this in his statement.

The accused was summoned by the Inquiry Committee with the direction to submit his written reply to the show cause notice and statement of allegation who appeared on 13.01.14 and received copies of the complaint and other relevant statements. On 16/01/14, the accused patwari submitted his written reply in response to the Charge sheet/statement of allegations. His statement was also recorded and placed on file. The accused was also heard in person in presence of DK of this office.

Written reply of the accused perused wherein he has alleged that the amount of Rs.140000/- was the revenue tax while the remaining portion of revenue tax was yet to be deposited. That his statement was signed by him under pressure. That the accused is a poor and having a large family to support including his ailing daughter suffering from Thalesemia.

Coming to his statement recorded before the Inquiry Committee, in the very beginning of his statement he has requested that he may be pardoned/absolved and that he will be careful in future. He has further alleged that my son has returned the said amount of Rs.140000/- which his son had received from Anwar property dealer. That the said amount had been received as revenue tax. He has also admitted that at column-13, the amount of Rs.468800/- is mentioned and on said amount only 4 percent revenue tax is payable.

The perusal of the written reply and his statement recorded before the Inquiry committee revealed that there is contradiction in the statement of the accused. He is quite confused rather in a fix as at one place he has stated that the said amount was charged as revenue tax while in his statement he admits that at column.13 the amount of Rs.468800/- has been written and on the said amount the payable revenue tax is Rs.18752/-. Similarly he has also failed to produce any evidence that his statement in the preliminary inquiry has been recorded under pressure and that it was not his voluntary confession. At the same time he has also requested that he may be pardoned.

Hence in the circumstances when the issue has been patched up. The complainant has also received back his amount of Rs.140000/- and he has got no other grievance against the said accused. It is also worth mentioning that the complainant also did not bother to appear before the Inquiry Committee despite the fact that he was telephonically directed by the Reader of the AAC for his appearance before the committee.

The inquiry committee is of the view that the said accused patwari be given minor punishment under Govt Servants E & D Rules 2011 on humanitarian basis keeping in view his poor position and his assurance that he will be careful in future.

Report is submitted as desired please.

Abdul
Deputy Commissioner
Peshawar

(Abdul Nabi), AAC-I,
(Mahmood Ahmad), AAC-VI/Inquiry officers

ATTESTED



OFFICE OF THE
DEPUTY COMMISSIONER
PESHAWAR



Dated Pesh. the 09/08/2014

H-14

OFFICE ORDER:

No. 8599 /DC(P)/EA.

WHEREAS, Mr. Siraj Muhammad S/O Wali Muhammad, Patwari (BPS-09), Halqa Rashida was proceeded against under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Disciplinary Rules 2011, for charges mentioned in Charge Sheet & Statement of Allegations.

AND WHEREAS, An inquiry committee comprising of M/S Abdul Nabi AAC-I and Mahmood Ahmad AAC-VI Peshawar was constituted to conduct inquiry against the said Patwari.

AND WHEREAS, the inquiry committee after having examined the charges, evidence on record and explanation of the accused Patwari, submitted its report, whereby the charges leveled against the accused Patwari stand proved.

NOW THEREFORE, the undersigned being the competent authority after having considered the charges, evidence on record, the explanation of the accused Patwari and findings of the enquiry committee, and exercising the powers under section-4(b)(ii) read with section-14(5)(ii) of the Khyber Pakhtunkhwa Govt. Servants E&D Rules 2011 has been pleased to impose the major penalty of "Compulsory Retirement" upon the above named Patwari with immediate effect.

(S. Zaheer-ul-Islam)
Deputy Commissioner
Peshawar

Endst: No. 8600-6 /DC(P)/EA.

Copy forwarded to the:

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Peshawar Division Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. Additional Deputy Commissioner, Peshawar.
5. Accounts Officer of this office for further necessary action.
6. Tehsildar, Peshawar.
7. Official concerned.

(S. Zaheer-ul-Islam)
Deputy Commissioner
Peshawar

ATTESTED

BEFORE THE WORTHY COMMISSIONER PESHAWAR.

I-15

Prayers in Appeal:

On acceptance of this appeal, the impugned office order No. 8600-6/DC (P)/EA Dated Peshawar the 04-08-2014, Passed by the Deputy Commissioner Peshawar whereby the appellant has compulsorily been retired from service, may very graciously be set-aside and the appellant may please be reinstated in service with all consequential back benefits.

Brief alleged facts of the case are as under:

That a complaint was allegedly lodged by one Mr. Abdul Ghani and accordingly the appellant was charge-sheeted to the effect that illegal gratification of Rs. 1, 40,000/- was received by the appellant for attestation of Mutation No. 4836 dated 27-08-2013 and further demanded Rs. 2, 00,000/- and due to non-payment of additional amount, the Mutation in question was cancelled on 05-12-2013 and hence the case..

1) (i) That a so-called preliminary inquiry was conducted wherein no chance of cross examining the complainant or any other witnesses was arranged as the presence of the complainant was not forced/secured and thus the inquiry was legally defective being one sided.

(ii) That the appellant was pulled forcibly under severe pressure and undue duress to sign a deed which was blindly got signed by the appellant and thus he put the wording UP under his signature denoting "under pressure" whereas he has never confessed the guilt whatsoever as he has committed no omission, illegality or irregularity whatsoever and there is no any fault on his part as no such evidence is/was available on file.

(iii) The inquiry committee has only gone through a written complaint and did not pressurize the complainant to ensure his presence and thus the evidence so collected by the enquiry committee do not warrant professional misconduct, even then, they recommended the case for minor penalty.

Re examine in future
AC (R) S
Commissioner Peshawar
D No 9/11.....Dated 2/8/14.

Suppl AR
OW
7/8
AR.

ATTACHED
MJ

(iv) That the complainant has also tendered an AFFIDAVIT stating therein that he has never given any sort of bribe or illegal gratification directly to the appellant rather he admits that some third person has defrauded him by using my name. For the sake of my reply, if it is presumed that I have accepted bribe or illegal gratification from complainant then what was the logic to bring him in litigation by not extending him illegal cooperation. The allegations are totally incorrect, frivolous and fabricated one. Had it been correct, the complainant must be presented personally before the inquiry committee to support his stance. (Copy of the Affidavit is annexure "A").

(v) That the enquiry proceedings were initiated and concluded in absence of the complainant and thus a novel procedure has been adopted and the innocent low paid Government has been penalized on a simple complaint without touching the complainant whereas no evidentiary value could be given to such like anonymous complaint.

2) Sir, it is very much astonishing that after completion of the so-called preliminary inquiry, the appellant was charge sheeted and summary of allegation was served upon the appellant and the inquiry committee was constituted but the previous findings of the inquiry committee in its preliminary inquiry was adopted and no fresh inquiry was conducted by the competent inquiry committee, properly constituted in the charge sheet.

3) That the recommendations made by the honorable enquiry committee are contradictory inter-se, the benefit of such contradiction can be extended to the appellant and the appellant may please be exonerated from the charges leveled against me.

4) That the impugned order has been passed in the exercise of colorful authority which is unlawful, without lawful authority, without jurisdiction, un-Islamic, un-constitutional, against the norms of equity and natural justice.

5) That admittedly the appellant has committed no offence whatsoever and to this extent the statements of PWs are self-explanatory which transpires that the whole allegation are baseless and rootless one but for the reason best known to the authority, the appellant has been made a scapegoat.

ATTESTED

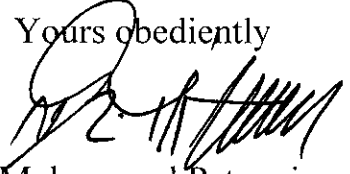
- 17
- 6) That no proper enquiry has been conducted and the statements of the concerned PWs have not been recorded on oath. The affidavit tendered by the complainant has not been considered at all. It is strange to say that on one hand, a complaint allegedly submitted by one Abdul Ghani who has never pursued his complaint and who did not appear before the inquiry committee and as such neither his statement was recorded nor a chance of cross examining was given to the appellant and even then drastic action was taken resulting the major penalty awarded to the appellant while on the other hand, the affidavit given by the said Abdul Ghani, exonerating the appellant from the charges was not believed.
 - 7) That valuable right was accrued to the appellant whereas his fundamental valuable rights have been encroached by the authority on their personal whims & wishes and such encroachment is hit by the law on the subject and the command of the constitution of the Islamic Republic of Pakistan 1973.
 - 8) Sir, I would be satisfied and grateful if a personal hearing is bestowed upon me while deciding the fate of my appeal.

In view of the foregoing facts, circumstances and submissions, it is therefore humbly prayed that On acceptance of this appeal the impugned order No. 8600-6/DC (P)/EA Dated Peshawar the 04-08-2014, Passed by the Deputy Commissioner Peshawar whereby the appellant has compulsorily been retired from service may be set-aside and the appellant be re-instated in service with all back benefits, seniority and allied allowances.

Any other remedy is available may be also extended in favour of the appellant to meet the ends of justice.

I shall pray for your long life and prosperity.

Yours obediently


Siraj Muhamamd Patwari
Halqa Rashida Peshawar.

Dated: 07-08-2014.

ATTESTED




OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

No. D.A/Siraj M/AR/10058
Dated 20.08.2014.

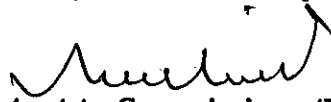
To,

The Deputy Commissioner,
Peshawar.

Subject: DEPARTMENTAL APPEAL OF SIRAJ MUHAMMAD PATWARI AGAINST THE
IMPUGNED ORDER DATED 04.08.2014

I am directed to enclose herewith a copy of departmental appeal filed by Mr. ~~Siraj Muhammad~~ Ex-Patwari Halqa Rashida, Peshawar against the order dated 04.08.2014, whereby major penalty of compulsory retirement was imposed upon him under section-4(b)(ii) and section 14(5)(ii) of Khyber Pakhtunkhwa, Government Servants(Efficiency & Discipline) Rules, 2011.

It is, therefore, requested that a representative well versed with facts of the case may kindly be deputed to appear before the appellate authority (Commissioner Peshawar Division) on the date 26.08.2014 at 10:00 AM fixed for hearing along-with comments please.



Assistant to Commissioner(R/GA)
Peshawar Division, Peshawar

No. D.A/Siraj M/AR/10059-60

Copy forwarded to :-

1. ~~Deputy Commissioner Peshawar~~
PS to Commissioner Peshawar Division.

2. Mr. Siraj Muhammad Patwari(Appellant). He is also directed to appear before the appellate authority on the above date fixed for hearing.


Assistant to Commissioner(R/GA)
Peshawar Division, Peshawar

o/v

ATTESTED



BEFORE THE COMMISSIONER, PESHAWAR.

19

Departmental Appeal.

Siraj Muhammad, Patwari Halqa Rashida, Peshawar.....(Appellant)

Versus

Deputy Commissioner, Peshawar.....(Respondent)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT.

Preliminary Objections.

1. That the appellant in the instant case has no locus standi or cause of action to institute present appeal.
2. That the appellant has not come to this honorable Court with clean hands.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable.

OBJECTION ON FACTS.

1. (i) Incorrect. The appellant has himself admitted the illegal gratification amount demanded by him and returned the same to the complainant Mr. Abdul Ghani in the presence of the Inquiry Officer through his son Aamir Shehzad and also recorded his statement.
(ii) Incorrect.
(iii) In the preliminary enquiry the enquiry officer recommended him for major penalty for dismissal from service. The detail enquiry committee recommended him for minor penalty on sympathetic grounds. As per Govt. instructions and E&D Rules the enquiry officer are simply supposed to hold any accused guilty or otherwise. It is the prerogative of competent authority to impose the penalty. Keeping in view the clean breast confession by the accused official of taking illegal gratification from the complainant and hence put ^{on} the compulsory retirement.
(iv) Incorrect. The enquiry committee has pointed out that complainant Mr. Abdul Ghani and third party, the two witnesses M/S Muhammad Anwar and Muhammad Irshad as well as the appellant and his son Aamir Shehzad have properly been summoned and heard in person and their statements have been recorded which proved and found guilt on the part of the appellant.
(v) Incorrect.
2. Incorrect. All the procedures have already been adopted.
3. No comments.
4. Incorrect. All the rules applicable on the appellant adopted by the respondent who is the competent authority and exercised the powers.
5. Incorrect.
6. Incorrect. As stated in Para-1(iv).
7. Incorrect.
8. No comments.

It is prayed that instant appeal of the appellant may be dismissed please.

50
Deputy Commissioner,
Peshawar
(Respondent)

ATTESTED

17
9.



K-20

**IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

APPEAL NO: 48/2014

DATE OF INSTITUTION: 06.08.2014

DATE OF DECISION: 10.09.2014

Siraj Ahmed, Patwari(BPS-09) Ex-Patwar Halqa ~~Peshawar~~ District Peshawar

(Appellant)

VERSUS

Deputy Commissioner Peshawar.....

(Respondent)

ORDER

This order will dispose off the instant departmental appeal filed by the above named appellant against the Deputy Commissioner Peshawar order bearing No. 8567-73/DC(P)/EA dated 04.08.2014, whereby he was awarded major penalty of "compulsory retirement" from service under section-4(b)(ii) read with section-14(5)(ii) of Govt: of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

Facts of the case are that one Mr. Abdul Ghani S/O Sher Ali R/o Bahader Khel, Dursamand, District Hangu submitted a complaint stating that the appellant received from him illegal gratification of Rs. 140,000/- for attestation of mutation No. 4836 dated 27.08.2013. The appellant demanded further amount of Rs. 200000/- and due to non-payment of additional payment, cancelled the said mutation. The appellant was suspended from service vide order dated 28.11.2013 and Mr. Asad Haraon, Assistant Commissioner Peshawar was appointed as Enquiry Officer to conduct a preliminary enquiry. The inquiry Officer recommended the appellant for major penalty of "Dismissal from service" after clean breast confession by the appellant.

Based on the findings of preliminary Inquiry Officer, the Deputy Commissioner Peshawar/Competent Authority vide order dated 06.01.2014 constituted an Inquiry Committee to scrutinize the conduct of the appellant viz-a-viz the statement of allegations already served upon him. After receipt of the recommendations of the Inquiry Committee, the Deputy Commissioner Peshawar/Competent Authority imposed a major penalty of "compulsory retirement" from service upon the appellant u/s 4(b)(ii) read with section 14(5)(ii) of the Government of Khyber Pakhtunkhwa, Government Servants (Efficiency & Disciplinary) Rules-2011.

Aggrieved of the order of Deputy Commissioner Peshawar/Competent Authority, the appellant filed the instant appeal.

Appellant and Representative of the Deputy Commissioner Peshawar present and heard. Comments received from Deputy Commissioner Peshawar also examined. Charges against the appellant that he has received illegal gratification and its subsequent confession has already been proved.

Keeping in view the above facts, I see no reasons to interfere in the impugned order of the Deputy Commissioner Peshawar dated 04.08.2014 which is thus upheld. The appeal in hand stands rejected. File to GRR.

ATTACHED

M. G.


COMMISSIONER
PESHAWAR DIVISION PESHAWAR.

ANNOUNCED
10.09.2014

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

_____ OF 2014

Siraj Mohammad

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt. of KPK

(RESPONDENT)
(DEFENDANT)

I/We Siraj Mohammad

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2014



CLIENT


ACCEPTED

**NOOR MOHAMMAD KHATTAK
(ADVOCATE)**

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1169 /2014

Siraj Mohammad VS *Revenue Deptt.*

APPLICATION FOR EARLY HEARING OF
THE ABOVE MENTIONED APPEAL

R.SHEWETH:

- 1- That the above mentioned appeal is pending adjudication before this august tribunal in which *16.12.2014* date is fixed for hearing.
- 2- That in the above mentioned appeal the appellant challenged the impugned order dated *4.8.2014*.
- 3- That the interest of justice demands that such like matters should be heard as early as possible to meet the ends of justice and also to meet the principles of access to justice.

It is therefore most humbly prayed that on acceptance of this application the appeal of the appellant may be heard on an early date to meet the ends of justice.


PETITIONER

THROUGH:


NOOR MOHAMMAD KHATTAK
ADEVOATE

Allowed. May
be fixed on 1-12-2014.
27/10/14

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1169/2014.


Siraj Muhammad, Ex-Patwari (BPS-09) Halqa Rashida, Peshawar(Appellant)


VERSUS

1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. The Commissioner Peshawar Division Peshawar
3. The Deputy Commissioner, Peshawar(Respondents)

AFFIDAVIT

We, Respondents No.1 to 3 do hereby solemnly affirm and declare on oath that the contents accompanying Para-wise comments submitted are true and correct to the best of our knowledge and belief and that nothing has been concealed from this honourable Tribunal and authorize Govt. Pleader to defend the instant appeal on our behalf.


Deputy Commissioner
Peshawar
(Respondent No.3)


Commissioner
Peshawar Division, Peshawar
(Respondent No.2)

Senior Member Board of Revenue,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No.1169/2014

Siraj Muhammad, Ex-Patwari (BPS-09) Halqa Rashida, Peshawar(Appellant)
VERSUS

1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. The Commissioner Peshawar Division Peshawar
3. The Deputy Commissioner, Peshawar(Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO2 TO 3

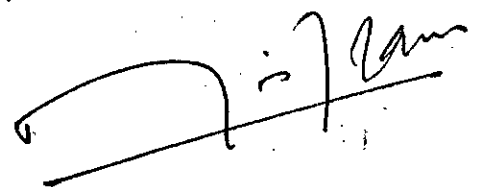
Respectfully Sheweth,

Preliminary Objections.

1. That the appellant in the instant case has no locus standi or cause of action to institute present appeal.
2. That the appellant has not come to this honourable Tribunal with clean hands.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable.
5. That the instant appeal is barred by law.

OBJECTION ON FACTS.

1. Correct to the extent that the appellant was an employee of Revenue Department.
2. One Abdul Ghani S/O Sher Ali r/o Hangu lodged a complaint against the appellant for taking bribe of Rs.140,000/- for entering/attestation of mutation No.4838 and further demanded Rs.200,000/-. An enquiry was conducted in the matter through Assistant Commissioner Peshawar and in the enquiry report the allegations were proved correct.
3. Incorrect. The appellant himself admitted the receiving of illegal gratification/amount of Rs.140,000/- and later on returned the same to the complainant in the presence of enquiry officer.
4. Incorrect. On accepting the allegation by the appellant, action under E&D Rules 2011 was initiated and charge sheet alongwith statement of allegations were served upon the appellant. An enquiry committee was constituted to probe into the matter. The enquiry committee fixed the responsibility & confirmed the taking of bribe by the appellant.
5. Correct to the extent that reply to the show cause notice was submitted by the appellant but the same could not satisfy the competent authority. Moreover the enquiry was impartial and proper opportunity of defence was provided to the appellant.




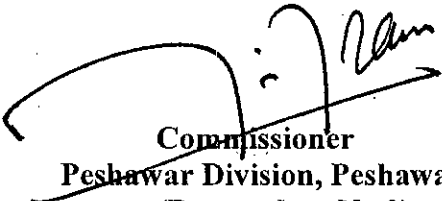
6. Correct. As in Para 5 above.
7. Correct.
8. The appellant has got no cause of action to file the instant appeal.

GROUNDS

- A. Incorrect. All the codal formalities were fulfilled and procedures under the E&D Rules 2011 were adopted.
- B. Incorrect. The respondents have adopted Law & Rules and not violated the constitution of Pakistan.
- C. Incorrect. Chance of personal hearing was also given to the appellant before imposing the penalty.
- D. Incorrect. As per para A above.
- E. Incorrect. The appellant has himself admitted the allegations. The appellant was given proper opportunity of defence but he failed to prove himself innocent.
- F. Incorrect. All the procedures required under E&D Rules 2011 were adopted and the appellant admitted the illegal gratification and returned the same in the presence of enquiry officer.
- G. Incorrect. As stated in fact at Para-4 above.
- H. Incorrect. The orders dated 04/08/2014 and 10/09/2014 were issued as per Law/Procedures.
- I. That the respondents seek permission to raise additional grounds and proof at the time of arguments.

It is prayed that instant appeal of the appellant may please be dismissed with cost.


Deputy Commissioner
Peshawar
(Respondent No.3)


Commissioner
Peshawar Division, Peshawar
(Respondent No.2)

Senior Member Board of Revenue,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1169/2014.

Mr. Siraj Muhammad Ex-Patwari District Peshawar.

VERSUS

Senior Member, Board of Revenue, Khyber Pakhtunkhwa and others.

COMMENTS ON BEHALF OF RESPONDENT NO.1

Preliminary objection.

1. The appeal is not competent in its present form.
2. That appellant has got no cause of action.
3. That appeal is bad due to mis-joinder/ non-joinder of necessary parties.
4. That appellant is estopped by his own conduct.
5. That appellant has not come to the Tribunal with clean hands.

ON FACTS.

1. Pertains to record of the office of Deputy Commissioner, Peshawar.
2. Correct to the extent that as per report of Enquiry Officer the appellant has received Rs. 140,000/- from the complainant as illegal gratification for attestation of mutation No. 4838.
3. Incorrect. The appellant in statement at Annex-A) to the appeal has admitted receipt of Rs. 140,000/- which was later on returned to the complainant in the office of Deputy Commissioner, Peshawar.
4. As in para-3 above.
5. Incorrect. An impartial enquiry was conducted against the appellant wherein charges have been proved against the appellant.
6. Incorrect. Penalty was imposed upon the appellant by the Competent Authority on the basis of recommendation of Enquiry Committee.
7. Departmental appeal was rightly rejected by the respondent No.2.
8. Incorrect. The appeal is not maintainable.

GROUND.

- A. Incorrect. Orders passed by the competent Authority are according to law.
- B. Incorrect. The appellant has been treated in accordance with law.

- C. Incorrect. Proper opportunity of hearing was awarded to the appellant.
- D. Incorrect. Enquiry was conducted under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011.
- E. As in "C" above.
- F. Incorrect. Charges were proved against the appellant as per report of the Enquiry Committee.
- G. Repeation of para-3 of the facts.
- H. Incorrect. The order passed by Competent Authority is according to law and passed on the basis of report of Enquiry Committee.
- I. The respondent will also seek permission to advance additional grounds during arguments.

The appeal having no legal footing may be dismissed with costs.

M. A. A.

Respondent No. 1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1169/2014

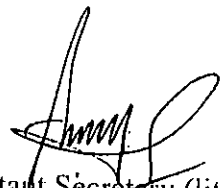
Mr. Siraj Muhammad Ex-Patwari District PeshawarAppellant

VERSUS

Senior Member, Board of Revenue, and others.....Respondents

AFFIDAVIT

I Mir Qasim Assistant Secretary (Lit;II), Board of Revenue Khyber Pakhtunkhwa do hereby solemnly affirm that the contents of the written reply are true and correct to the best of my knowledge and belief information provided to me, and nothing has been deliberately concealed from this Hon'able Tribunal.


Assistant Secretary (lit;II)
Board of Revenue

حلفیہ بیان

سراج برہنہ سوارسی - لاہور - لاہور نے جیٹا بیان کیا کہ میں
عرصہ تقریباً 15 سالوں سے اس دروغ پر نام لے رہا
استعمال نمبر 4838 درجہ S 27 کو میں نے 2018

کے لیے - عدالتی نام درج کیا استعمال و درگزر
انراج سے میں نے عدالتی کی طرف سے
تہہ ایشیا اور انڈیا کے پاس 1,40,000 روپے
کی رقم - یہی رقم آج میں اپنے بیٹے عباس
کے پاس رکھا ہے۔ DC کے دفتر میں DC
اور دیگر اہلکاروں کی موجودگی میں والیوں نے
مجھ سے رقمیں وصول کیں۔ یہ سب دیکھنے والے ہیں

Amir Khan
راہ شاد
راہ شاد

میں نے اس امر کو تسلیم کیا ہے کہ میں نے
کے خلاف عدالتی کارروائی کی ہے۔
میں نے کہا کہ میں نے خانہ نمبر 13 کی قیمت کے مطابق
کی بنا پر

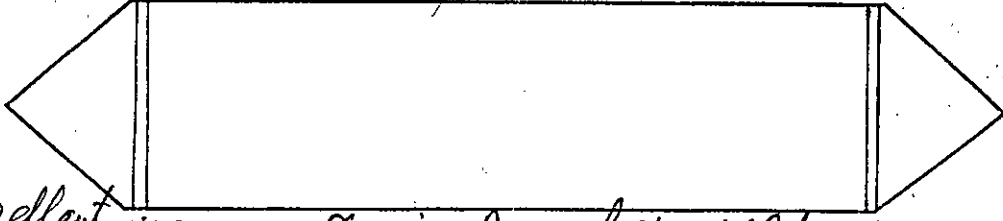
Amir Khan
Amir Khan
Amir Khan



ATTESTED

12

بعدالت خیمہ کھٹو کھٹو اسروس ٹریڈنگ پرائیویٹ لمیٹڈ



Appellant بنام 2 Service Appeal No. 1169/2014

موزخہ
مقدمہ
دعویٰ
جرم

بنام SMBR وغیرہ
Respondents

دسریج محمد
القہ پٹواری
Appellant

باعث تحریر آنکہ

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

آن مقام KPK-ST کیلئے M. Usman Khan Turlandi

M. A. LL. B Advocate
Peshawar

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار و وظیفہ
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت 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۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پر داختم منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا اوکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم تاریخ ماہ الربیع الثانی 2015

ATTESTED
&
ACCEPTED

کے لئے منظور ہے۔

بمقام KPK-ST.

محمد عثمان خان ترلانڈی
ایڈووکیٹ پشاور ہائی کورٹ

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

In Ref; to Appeal No. 1169/ of 2014.

Siraj Muhammad Ex- PatwariVersus.....SMBR & others.

**REJOINDER ON BEHALF OF THE APPELLANT TO THE
COMMENTS OF RESPONDENT NO. 2 & 3.**

RESPECTFULLY SHEWETH;

REPLY TO THE PRELIMINARY OBJECTIONS;

- 1) Incorrect. Incorrect. The appellant has got good cause of action and locus-standi.
- 2) Incorrect. As a basic fundamental right of legal profession is denied to the appellant hence no question of not coming with clean hands is arisen.
- 3) Incorrect. No rule of estoppel is applicable and attracted while filing the instant appeal.
- 4) Incorrect. The appeal is maintainable and competent in its present form.
- 5) Incorrect. Under Article 212 of the constitution, the appellant has no other option except to approach this august Tribunal as the legal remedy is only available to him by filing the instant service appeal for the redressal of his grievances and as such the appeal is not barred by law.

FACTS:-

- 1) Being admitted and while pertaining to the record, needs no reply.
- 2) Incorrect. No such concrete evidence is available on file concerning to the allegation and bare allegation which has neither head nor tail and even has no legs to stand, does not take place of evidentiary value. The inquiry committee has only gone through a written complaint allegedly submitted by one Abdul Ghani (Complainant) and then did not pressurize the said complainant to ensure his presence and to make him available in presence of the appellant thus the evidence so collected by the enquiry committee in absence of the complainant do not warrant professional misconduct, even then, they recommended the case for minor penalty.
- 3) Incorrect. The appellant was pulled forcibly under severe pressure and undue duress to sign a deed which was blindly got signed by him and the appellant, though, under compulsion, signed it but put the wording UP denoting "under pressure" whereas he has never confessed any guilt whatsoever as he have committed no omission, illegality or irregularity whatsoever and there is no any fault on his part as there is no such evidence available on file.
- 4) Incorrect. Detailed reply has been given in Para No. 3 above. However it is added that no proper legal and transparent inquiry has ever been conducted as per mandatory provisions of law. Had any such inquiry ever been conducted in accordance with law in the light of the ground reality, the position would definitely speak about the innocence of the appellant.
- 5) No proper legal and transparent inquiry has ever been conducted as per mandatory provisions of law. Had any such inquiry ever been conducted in accordance with law in the light of the ground reality, the position would definitely speak about the innocence of the appellant.
- 6) Incorrect. The recommendation so made by the Enquiry Officer has not been evaluated before passing the first as well as final impugned order and thus the respondents have arrived on wrong conclusion.

- 7) Incorrect. Departmental representation has been dismissed with a single stroke of pen and the concerned authority has never bothered to appraise/evaluate the evidence.
- 8) Incorrect. Detailed reply has been given in Para-5 & 6 above, however it is added that the first as well as the final impugned orders are quite illegal, unlawful, without lawful authority, against the law on the subject and against the norms of natural justice hence, liable to be reversed and in such circumstances, the appeal is maintainable and proper cause of action is accrued to the appellant.

GROUNDS:

- a) Incorrect. No codal formalities has ever been fulfilled and no speaking order has been passed and the first as well as the final impugned orders are quite illegal, unlawful, without lawful authority, against the law on the subject and against the norms of natural justice.
- b) Incorrect. Detailed reply has been given in Para-a) above.
- c) Incorrect. The so-called inquiry was conducted and the appellant was summoned up but no chance of cross examining the complainant or other PWs was arranged as the presence of the complainant was not forced/secured and thus the inquiry was legally defective being one sided.
- d) Incorrect. Presumption of innocence of accused is always paramount irrespective of the heinousness of the alleged offence. It is strange to say that no proper legal and transparent inquiry has ever been conducted as per mandatory provisions of law and as such no chance of cross examining of the PWs has been given to the appellant. When the inquiry has not been conducted in accordance with the law on the subject then how it would say that the penalty so imposed was in accordance with law.
- e) Incorrect. Detailed reply has been given above in Para-3) of the Facts above whereas the appellant has never admitted any guilt voluntarily. However it is added that the respondents No. 2 & 3 have never bothered to evaluate and appraise the findings of the Enquiry Officer.

1) Incorrect. The complainant has not alleged that he has ever given any sort of bribe or illegal gratification directly to the appellant rather he admits that some third person has defrauded him by using the name of the appellant. For the sake of reply/rejoinder, if it is presumed that the appellant has accepted bribe or illegal gratification from complainant then what was the logic to bring him in litigation by not extending him illegal cooperation by the appellant. The allegations are totally incorrect, frivolous and fabricated one. Had it been correct the complainant must be present personally before the inquiry committee to support his stance. The inquiry committee has only gone through a written complaint and did not pressurize the complainant to ensure his presence and to make him available in presence of the appellant thus the evidence so collected by the inquiry committee in absence of the complainant do not warrant professional misconduct, even then they recommended the case for minor penalty.

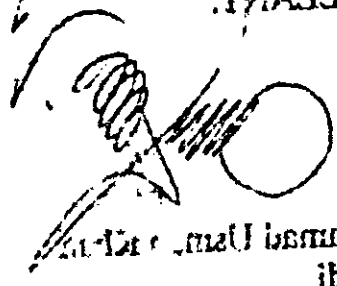
2) Detailed reply has been given in Para-3&4 of the facts above.

3) Incorrect. Detailed reply has been given above in Para-4). However it is added that the no statement of any PW has been recorded on oath and the appellant has never been given a chance of cross examination and thus no credibility could be relied upon it which has no value in the eyes of law. The impugned order is not a speaking order based on non-cogent reason.

4) Incorrect. Para-7 is legal one.

In view of the foregoing facts and grounds in shape of the rejoinder on behalf of the appellant, it is therefore humbly prayed that the appeal of the appellant may graciously be allowed enabling the appellant to get the legal redressal of his grievances.

APPELLANT



Muhammad Usman
Tribandi
Advocate

Through:

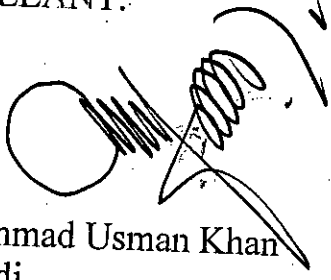
D-107-10/175012

- f) Incorrect. The complainant has not alleged that he has ever given any sort of bribe or illegal gratification directly to the appellant rather he admits that some third person has defrauded him by using the name of the appellant. For the sake of reply/rejoinder, if it is presumed that the appellant has accepted bribe or illegal gratification from complainant then what was the logic to bring him in litigation by not extending him illegal cooperation by the appellant. The allegations are totally incorrect, frivolous and fabricated one. Had it been correct, the complainant must be present personally before the inquiry committee to support his stance. The inquiry committee has only gone through a written complaint and did not pressurize the complainant to ensure his presence and to make him available in presence of the appellant thus the evidence so collected by the enquiry committee in absence of the complainant do not warrant professional misconduct, even then, they recommended the case for minor penalty.
- g) Detailed reply has been given in Para-3&4 of the facts above.
- h) Incorrect. Detailed reply has been given above in Para-d). However it is added that the no statement of any PW has been recorded on oath and the appellant has never been given a chance of cross examination and thus no credibility could be relied upon it which has no value in the eyes of law. The impugned order is not a speaking order based on non-cogent reason.
- i) Incorrect. Para-J is legal one.

In view of the foregoing facts and grounds in shape of the rejoinder on behalf of the appellant, it is therefore humbly prayed that the appeal of the appellant may graciously be allowed enabling the appellant to get the legal redressal of his grievances.

APPELLANT.

Through;


Muhammad Usman Khan
Turlandi
Advocate Peshawar.

Dated;- 10 /7/2015.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

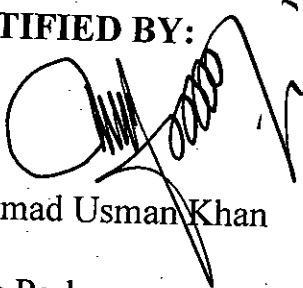
In Ref; to Appeal No. 1169/ of 2014.

Siraj Muhammad Ex- Patwari Versus.....SMBR & others.

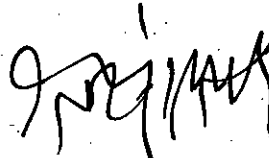
AFFIDAVIT.

I, Siraj Muhammad Ex-Patwari, do hereby solemnly affirm and declare on oath that contents of the Rejoinder on behalf of the appellant are true and correct to the best of my knowledge and belief and nothing has been kept secret or concealed therein.

IDENTIFIED BY:



Muhammad Usman Khan
Turlandi
Advocate Peshawar



DEPONENT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

In Ref; to Appeal No. 1169/ of 2014.

Siraj Muhammad Ex- PatwariVersus.....SMBR & others.

**REJOINDER ON BEHALF OF THE APPELLANT TO THE
COMMENTS OF RESPONDENT NO. 1.**

RESPECTFULLY SHEWETH;

REPLY TO THE PRELIMINARY OBJECTIONS;

- 1) Incorrect. The appeal is maintainable and competent in its present form.
- 2) Incorrect. The appellant has got good cause of action and locus-standi.
- 3) Incorrect. All the necessary parties have properly been arrayed as respondents.
- 4) Incorrect. No rule of estoppel is applicable and attracted while filing the instant appeal.
- 5) Incorrect. As a basic fundamental right of legal profession is denied to the appellant hence no question of not coming with clean hands is arisen.

FACTS:-

- 1) Being admitted and while pertaining to the record, needs no reply.
- 2) Incorrect. No such concrete evidence is available on file concerning to the allegation and bare allegation which has neither head nor tail

and even has no legs to stand, does not take place of evidentiary value.

- 3) Incorrect. The appellant was pulled forcibly under severe pressure and undue duress to sign a deed which was blindly got signed by him and the appellant, though, under compulsion, signed it but put the wording UP denoting "under pressure" whereas he has never confessed any guilt whatsoever as he have committed no omission, illegality or irregularity whatsoever and there is no any fault on his part as there is no such evidence available on file.
- 4) Incorrect. Detailed reply has been given in Para No. 3 above and hence, needs no repetition.
- 5) No proper legal and transparent inquiry has ever been conducted as per mandatory provisions of law. Had any such inquiry ever been conducted in accordance with law in the light of the ground reality, the position would definitely speak about the innocence of the appellant.
- 6) Incorrect. The recommendation so made by the Enquiry Officer has not been evaluated before passing the first as well as final impugned order and thus the respondents have arrived on wrong conclusion.
- 7) Incorrect. Departmental representation has been dismissed with a single stroke of pen and the concerned authority has never bothered to appraise/evaluate the evidence.
- 8) Incorrect. Detailed reply has been given in Para-5 & 6 above, however it is added that the first as well as the final impugned orders are quite illegal, unlawful, without lawful authority, against the law on the subject and against the norms of natural justice hence, liable to be reversed and in such circumstances, the appeal is maintainable.

GRUNDS:

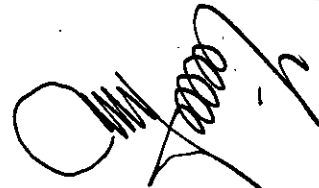
- a) Incorrect. No speaking order has been passed and the first as well as the final impugned orders are quite illegal, unlawful, without lawful authority, against the law on the subject and against the norms of natural justice.

- b) Incorrect. Detailed reply has been given in Para-a) above.
- c) Incorrect. The so-called inquiry was conducted and the appellant was summoned up but no chance of cross examining the complainant or other PWs was arranged as the presence of the complainant was not forced/secured and thus the inquiry was legally defective being one sided.
- d) Incorrect. Presumption of innocence of accused is always paramount irrespective of the heinousness of the alleged offence. It is strange to say that no proper legal and transparent inquiry has ever been conducted as per mandatory provisions of law and as such no chance of cross examining of the PWs has been given to the appellant. When the inquiry has not been conducted in accordance with the law on the subject then how it would say that the penalty so imposed was in accordance with law.
- e) Incorrect. Detailed reply has been given above in Para-d). However it is added that the respondents No. 2 & 3 have never bothered to evaluate and appraise the findings of the Enquiry Officer.
- f) Incorrect. Detailed reply has been given above in Para-d). However it is added that the inquiry committee has only gone through a written complaint and did not pressurize the complainant to ensure his presence and to make him available in presence of the appellant thus the evidence so collected by the enquiry committee in absence of the complainant do not warrant professional misconduct, even then, they recommended the case for minor penalty.
- g) Detailed reply has been given in Para-3 of the facts above.
- h) Incorrect. Detailed reply has been given above in Para-d). However it is added that the no statement of any PW has been recorded on oath and the appellant has never been given a chance of cross examination and thus no credibility could be relied upon it which has no value in the eyes of law. The impugned order is not a speaking order based on non-cogent reason.
- i) Incorrect. Para-J is legal one.

In view of the foregoing facts and grounds in shape of the rejoinder on behalf of the appellant, it is therefore humbly prayed that the appeal of the appellant may graciously be allowed enabling the appellant to get the legal redressal of his grievances.

.....APPELLANT.

Through;



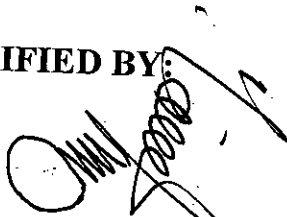
Muhammad Usman Khan
Turlandi
Advocate Peshawar.

Dated;- 10/7/2015.

AFFIDAVIT.

I, Siraj Muhammad Ex-Patwari, do hereby solemnly affirm and declare on oath that contents of the Rejoinder on behalf of the appellant are true and correct to the best of my knowledge and belief and nothing has been kept secret or concealed therein.

IDENTIFIED BY:



Muhammad Usman Khan
Turlandi
Advocate Peshawar



DEPONENT

K.P.K Service Tribunal Peshawar

خدمت صیاب

عنوان

Smbv

سراج محمد بنام

Appeal no 1169

صیاب عالی!

مود بازنہ گزارش ہے کہ میں ایک ٹھہری

آدمی ہوں۔ مجھے میرے بڑے ریتے میں گھر کا ٹھہرا

قرض ہے کہ حل رہا ہے۔ میرے اکاؤنٹ میں تاریخ

2015-12-1 دی گئی۔ برائے مہربانی اسے اگلے مہینے سے

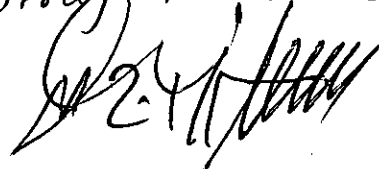
فیس کی جائے۔

عین نواز مس جوئی

Pl. accounted at
an earlier date.
Recd. 2/9/15

Appellant

Siraj Mohamed



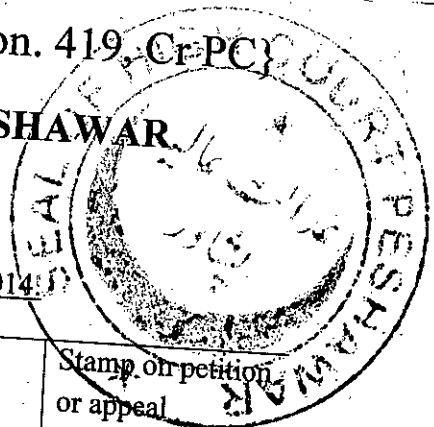
Appeal No. 1169/14 Siraj Muhammad

(Opening Sheet for criminal appeals {Section. 419, Cr.PC}

IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT.

Appellate Side Criminal Case No. 701-P 2014



District	Date of filling petition	Whether filed by appellant in person or by pleader or agent	Stamp on petition or appeal
PESHAWAR	23-12-2014	Muhammad Usman Khan Turlandi Advocate Peshawar.	N.A

Siraj Muhammad..... Accused/Convict/appellant.

VERSUS

The State..... Respondent.

Appeal from the impugned order/Judgment of: Learned Trial Court

Ant-Corruption (Provincial) KPK Peshawar.

Dated the: 22-12-2014.

Charge: U/S 409/419/420/468/471 PPC R/W 5 (2) PC Act Vide FIR No. 06 Dated 102-04-2010 PS ACE Peshawar.

Sentence: As Per impugned Order/ Judgment Dated 22-12-2014 ibid, The appellant was convicted and sentenced as under:

1. U/S 409 PPC, ONE YEAR SI WITH A FINE OF RUPEES 30,000/- (THIRTY THOUSAND) OR IN DEFAULT THEREOF SHALL UNDERGO ONE MONTH SI.
2. U/S 5 (2) PC ACT, ONE YEAR SI WITH A FINE OF RUPEES 30,000/- (THIRTY THOUSAND) OR IN DEFAULT THEREOF SHALL UNDERGO ONE MONTH SI.
3. SECTION 419/420/468/471 PPC BEING NOT PROVED, HENCE HE STANDS ACQUITTED IN THE SAID OFFENCE.
4. ALL THE SENTENCES SHALL RUN CONCURRENTLY.
5. THE BENEFIT U/S 382-B CR.P.C. IF APPLICABLE, IS EXTENDED IN FAVOUR OF THE APPELLANT.

Grounds of appeal/Revision.

Grounds of appeal are attached herewith.

(Signature)
Muhammad Usman Khan
Turlandi
Advocate Peshawar.

FILED TODAY
Deputy Registrar
23 DEC 2014

ATTESTED
EXAMINER
Peshawar High Court
23 DEC 2014

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

In Ref: to Cr: Appeal NO. 701-P of 2014.

Siraj Muhammad S/O Wali Muhammad R/O Wadpagga, Peshawar, working and posted as Patwari Halqa Musazai, Peshawar Presently convicted/confined at central Jail Peshawar.....APPELLANT.

VERSUS

The State**RESPONDENT.**

CHARGE U/S 409/419/420/468/471 PPC R/W 5 (2)
PC-Act VIDE FIR No. 06 DATED 10-04-2010
POLICE STATION ACE PESHAWAR.

APPEAL AGAINST THE IMPUGNED ORDER/JUDGMENT DATED 22-12-2014 PASSED BY THE COURT OF LEARNED SPECIAL JUDGE ANTI-CORRUPTION (PROVINCIAL) KHYBER PAKHTUNKHWA PESHAWAR WHEREAS THE APPELLANT WAS CONVICTED AND SENTENCED AS UNDER:

1. **U/S 409 PPC. ONE YEAR SI WITH A FINE OF RUPEES 30,000/- (THIRTY THOUSAND) OR IN DEFAULT THEREOF SHALL UNDERGO ONE MONTH SI.**
2. **U/S 5 (2) PC ACT, ONE YEAR SI WITH A FINE OF RUPEES 30,000/- (THIRTY THOUSAND) OR IN DEFAULT THEREOF SHALL UNDERGO ONE MONTH SI.**
3. **SECTION 419/420/468/471 PPC BEING NOT PROVED, HENCE HE STANDS ACQUITTED IN THE SAID OFFENCE.**
4. **ALL THE SENTENCES SHALL RUN CONCURRENTLY.**
5. **THE BENEFIT U/S 382-B CR.P.C. IF APPLICABLE, IS EXTENDED IN FAVOUR OF THE APPELLANT.**

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PRAYERS IN APPEAL.

On acceptance of this appeal the impugned order/judgment dated 22-12-2014 passed by the Learned Trial Court, being improper and illegal, may be set-aside and the appellant be acquitted from the charges leveled against him and be set at liberty.

RESPECTFULLY SHEWETH:-

1. That on the basis of source report that during posting of the appellant as Patwari Halqa Musazai, entered 72 Mutations in the relevant Register and allegedly after receiving the Government Tax money misappropriated and did not deposit it in the government Exchequer. Upon this information, an open enquiry was conducted and thereafter the FIR was registered and hence the case. (Copy of the FIR is annexure as "A").
2. That after conducting the so-called investigation, complete challan was put in court and the prosecution was asked to produce their evidence in response whereof as many as eleven PWs were produced and on conclusion of the trial the appellant was examined U/S 342 Cr.P.C whereas he pleaded his innocence and false implication however, wished not to produce evidence and nor opted to record his statement on oath and thereafter the Learned Trial Court while passing the impugned order/judgment dated 22-12-2014 convicted the appellant and sentenced him to undergo as per detail given in the heading Paras.(Copy of the Impugned order/judgment is annexure as "B").
3. That the appellant, in the given circumstances, while aggrieved of the impugned order/judgment passed by the Learned Trial Court dated 22-12-2014, approaches this august court for setting aside the impugned order/judgment and seeks his acquittal from the charges leveled against him on the following amongst other grounds inter-alia.

GROUNDS.

- a) That the order and judgment of the learned trial court convicting the appellant is against law and facts on file, hence untenable.

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- b) That despite police custody for sufficient time, even then nothing has been detected or extracted from the appellant in favour of the prosecution story.
- c) That the impugned order/judgment of the Learned trial Court is contrary to law, facts and material on record and, therefore, not sustainable in the eyes of law.
- d) That the Learned Trial Court has not appreciated the evidence on record and has extended the benefit of doubt to the prosecution.
- e) That the finding and observation made by the Learned Trial Court while passing the impugned order/judgment is based on conjecture, presumption and surmises and thus is untenable in the eyes of law.
- f) That there is material contradiction in the prosecution evidence, which has been overlooked by the Learned Trial Court.
- g) That the Learned Trial Court has neither read the evidence nor has given proper weight and non reading and miss reading of the evidence on record amounts to miss carriage of justice rather it has infringed the spirit of law.
- h) That the anti-corruption laws are not attracted in the case and there is no single complaint from the public rather the PWs have never deposed against the appellant.
- i) That the appellant has committed no illegality whatsoever whereas the appellant has rendered spotless services for a long considerable period and no complaint whatsoever has ever been assigned to him from any quarter.
- j) That further submission will be advanced at the time of hearing the appellant at the bar.

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- b) That despite police custody for sufficient time, even then nothing has been detected or extracted from the appellant in favour of the prosecution story.
- c) That the impugned order/judgment of the Learned trial Court is contrary to law, facts and material on record and, therefore, not sustainable in the eyes of law.
- d) That the Learned Trial Court has not appreciated the evidence on record and has extended the benefit of doubt to the prosecution.
- e) That the finding and observation made by the Learned Trial Court while passing the impugned order/judgment is based on conjecture, presumption and surmises and thus is untenable in the eyes of law.
- f) That there is material contradiction in the prosecution evidence, which has been overlooked by the Learned Trial Court.
- g) That the Learned Trial Court has neither read the evidence nor has given proper weight and non reading and miss reading of the evidence on record amounts to miss carriage of justice rather it has infringed the spirit of law.
- h) That the anti-corruption laws are not attracted in the case and there is no single complaint from the public rather the PWs have never deposed against the appellant.
- i) That the appellant has committed no illegality whatsoever whereas the appellant has rendered spotless services for a long considerable period and no complaint whatsoever has ever been assigned to him from any quarter.
- j) That further submission will be advanced at the time of hearing the appellant at the bar.

23 DEC 2014

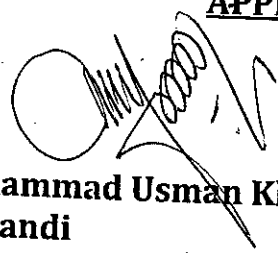
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In view of the aforesaid facts, Circumstances and submissions, it is therefore, humbly prayed that on acceptances of this appeal the impugned order / Judgment dated 22-12-2014 passed by the learned trial Court may be set-aside and the appellant be exonerated from the charges leveled against him and be set at liberty forthwith.

APPELLANT.

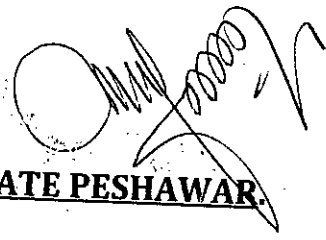
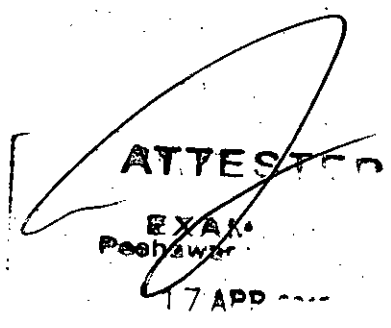
Through;



**Muhammad Usman Khan
Turlandi
Advocate Peshawar.**

Dated; 23/12/2014.

Note. As per instruction of my Client, No such like appeal has ever been filed previously before this august Court.


ADVOCATE PESHAWAR
ATTESTED
EXAM.
Peshawar
17 APP

FILED TODAY
Deputy Registrar
23 DEC 2014

(6)

IN THE PESHAWAR HIGH COURT PESHAWAR.

Cm 422-P/14

In Ref to Cr. Appeal NO. 701 of 2014.

Siraj Muhammad.....VERSUS.....The State.

Application U/S 426 Cr.P.C for the suspension of sentence and release of the appellant/Petitioner on bail.

Respectfully Sheweth:

1. That the appellant has filed the accompanying appeal before this august Court to-day wherein no date of hearing has yet been fixed.
2. That the appellant/petitioner has good prima-facie case and is hopeful of its success.
3. That the balance of convenience and inconvenience are also lies on the shoulders of the petitioner.
4. That the grounds taken in the accompanying appeal may also be considered as the integral part and parcel of this application.
5. That if the interim relief in shape of the suspension of sentence is not granted, the petitioner would suffer irreparable loss.
6. It is, therefore, humbly prayed that on acceptance of this application, the petitioner may please be released within the meaning of Sec; 426 Cr.P.C.

PETITIONER

Through;

Muhammad Usman Khan
Turlandi
Advocate Peshawar.

Dated; 23/12/2014.

FILED TODAY
Deputy Registrar
23 DEC 2014

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EXAMINER
Peshawar High Court
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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,

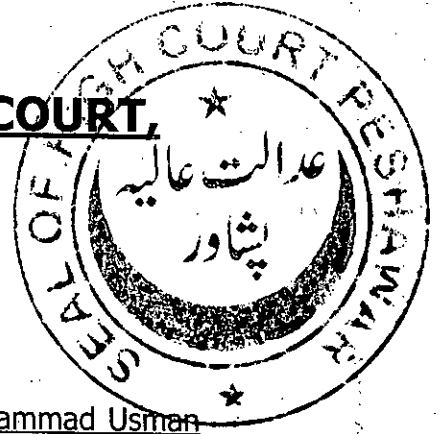
PESHAWAR
 (Judicial Department)

Cr.A. No.701-P/2014

Date of hearing: **06.04.2015**

Appellant (s) : Siraj Muhammad by Mr. Muhammad Usman Turlandi Advocate.

Respondent (s) : The State by Mian Arshad Jan, AAG.



JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This appeal is directed against the judgment dated 22.12.2014, passed by learned Special Judge Anti-Corruption (Provincial), Khyber Pakhtunkhwa, Peshawar, whereby he convicted and sentenced appellant Siraj Muhammad as under:-

Under section 409 PPC:- To undergo 01 year S.I. and to pay a fine of Rs.30,000/- or in default thereof to undergo 01 month S.I. further.

Under Section 5 (2) Prevention of Corruption Act:- to undergo 01 year S.I. and to pay a fine of Rs.30,000/- or in default thereof to undergo 01 month S.I.

*M. Siraj Afridi P.S. D

ATTESTED
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The sentences have been directed to run concurrently. Benefit of Section 382-B Cr.P.C. has been extended to him.

2. Charge against the appellant are that during his posting as Patwari Halqa Musazai, he misappropriated the government tax received by him from different people in respect of some 72 mutations. Open inquiry was ordered by the Director ACE in the matter, during which course statements of some private individuals, whom mutations had been kept unattested, were recorded. The alleged unattested mutations were also taken into possession and on the basis of final report of C.O. ACE, Peshawar, the Director ACE order registration of the case, resultantly, FIR No.06 dated 10.04.2010 under sections 409/419/420/468/471 PPC read with S. 5 (2) PC, Act, at Police Station ACE, Peshawar was registered against the appellant.

3. On completion of investigation and submission of challan against the appellant, he was tried by learned Trial Court and ultimately convicted and sentenced as mentioned above, hence, this appeal.

*M. Siroi Afridi P.S.D

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4. Learned counsel for the appellant contended that appellant has been acquitted by the learned Trial Court in all the offences charged with except under sections 409 PPC and S. 5 (2) PC, Act; that no shred of evidence whatsoever is available on record to prove the guilt of the appellant under the above two sections of law; that there is no allegation of corruption against the appellant, rather he being a Patwari of his Moza, all the taxes received by him from the people in respect of mutations, have already been deposited by him in Government Treasury and no damage has been caused to any individual or the government, followed by attestation of the mutations; that it was not the duty of the appellant to attest the mutations rather his job was to enter the mutations in the relevant register, which he had already done so at the time of registration of the preset case and it was the competent authority to attest mutations. He contended that statements of Habib ur Rehman and Shireen PW.4 and 8, respectively, whom are the alleged aggrieved persons are of much significance, in light of which no offence could be made out against the appellant but the learned Trial Court while totally

Attested in

*M. Siraj Afridi, P.S. D

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over-sighting their statements held the appellant guilty of the offence. He went on to say that the appellant is a poor chap who has suffered a lot by facing the agonies of protracted trial, followed by his forcible retirement from service for no fault; that prosecution has miserably failed to bring home the guilt of the appellant through cogent and confidence inspiring evidence, therefore, the impugned judgment is liable to be reversed.

5. Conversely, learned AAG fairly and frankly conceded that there is no allegation of corruption against the appellant, but he being a Patwari Halqa, caused unnecessary delay in depositing the government taxes received by him from different people in respect of attestation of the mutations, which has been later on deposited by him in the Government Treasury and the mutations have been duly attested.

6. Arguments heard and record perused.

7. Record divulges that the government tax received by the appellant as a Patwari in respect of attestation of mutations from different people, have been deposited by him

M. Siraj Afridi P.S.D.

ATTESTED
 DE EXAMINER
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Assessment 14/15

in the Government Treasury and the mutations have been duly attested. Habib ur Rehman who had charged the appellant in his statement for non-attestation of mutation despite payment of government tax to the appellant, appeared as PW.4. He deposed that he purchased land measuring 11 1/2 marals from one Iqbal and went to Patwari Halqa Siraj (appellant) for entry of mutation; that appellant received Rs.52000/- from him and entered mutation No.7709 in the relevant register with promise of its attestation; that when he, later on, inquired about attestation of mutation from the appellant he was playing delay tactics so he recorded his statement before C.O ACE with the request to take legal action against him. In cross examination, he deposed that appellant had received the above mentioned amount from him as revenue tax and not as bribe. He deposed that appellant properly entered the mutation in the revenue record, however, it was not attested, however, the same has been attested in his favour, later on. He deposed that the mutation was attested in his favour prior to his statement. He expressed his no objection on acquittal of the appellant.

Assn. Rehman

*M. Siraj Afridi P.S.D

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Similar is the statement of Shireen Rehman who had earlier charged the appellant before C.O. ACE in his statement. In cross-examination he deposed that mutation has been attested and he has no objection on acquittal of the appellant. Not a single witness has been produced by the prosecution to prove that any amount had been paid to the appellant as illegal gratification/bribe. Iqbal Hussain who was also aggrieved from the appellant due to his alleged delaying tactics in attestation of mutation recorded his statement as PW.10, wherein he admitted attestation of mutation and expressed his no objection on acquittal of the appellant.

8. Izhar Ahmad Patwari Halqa Musazai, who on transfer of the appellant from the said Moza on account of registration of case against him, appeared as PW.9. He deposed that all the taxes received by the appellant in respect of mutations had been deposited by the appellant in the government treasury and nobody made any complaint against him.

9. In light of the above discussed evidence, prosecution has failed to prove misappropriation of the tax/fee

M. Siroi Afridi P.S. D

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Peshawar High Court

by the appellant, received by him in the capacity of Patwari from different people in respect of mutations. All the mutations in respect of which the appellant received tax had been duly entered in the relevant register by him and attestation of the same was not his job. All the mutations have been attested subsequently, and the government tax has been deposited by the appellant, so neither any damage has been caused to the government or any private individual. No evidence whatsoever is on the file to prove receipt of illegal gratification/bribe by the appellant from any quarter/person. No tangible evidence is available on record to prove the guilt of the appellant under section 409 PPC and under section 5(2) Prevention of Corruption Act. The learned Trial Court has not adverted to the above discussed aspects of the case and reached to erroneous conclusion by holding the appellant guilty of the offence under the two sections of law. Resultantly, this appeal is allowed. Conviction and sentences of the appellant recorded and awarded by the learned Trial Court vide impugned judgment dated 22.12.2014, are set aside and he is acquitted of the charge leveled against him.

Assessment

*M. Siroj Afjifi P.S.D

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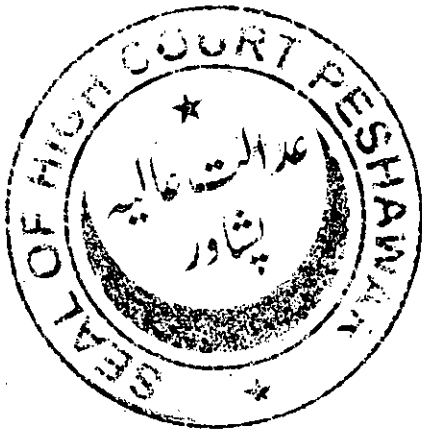
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Peshawar High Court

17 APR 2015

He is on bail, his bail bonds stand cancelled and sureties are absolved from liabilities of bail bonds.

Announced.
06.04.2016

sd/ Assadullah Khan Chohan Jemi
JUDGE



No. 19333

Date of Presentation of Application 15/04/15

No of Pages 15 p

Copying fee 11

Urgent Fee 11

Total 30.00

Date of Preparation of Copy 17-04-15

Date Given For Delivery 17-04-15

Date of Delivery of Copy 17-04-15

Received By Siraj Muhammad

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 28 ST Dated 5 / 1 / 2016.


To

The Deputy Commissioner,
Peshawar.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 23.12.2015 passed by this Tribunal on subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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

.....
Appeal No. 1169/2014

Siraj Muhammad

V/S

Revenue Deptt:

.....
**APPLICATION FOR FIXING OF AN EARLY DATE OF
HEARING IN THE ABOVE TITLED APPEAL INSTEAD OF 01.12.2015**
.....


RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal against the order dated 4.8.2014 where the appellant has compulsory retirement from service.
2. That the instant appeal is in argument stage and the next date fixed for the case is 1.12.2015 before this Honourable KPK Service Tribunal.
3. That due to the compulsory retirement from service of the appellant, the appellant is facing financial hardships as well as stigmatized in society.
4. That it will be in the interest of justice to fix the case at an early date.

It is, therefore, most humbly prayed that on acceptance of this application, an early date of hearing may kindly be fixed in the above Service Appeal instead of 1.12.2015. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.

Appellant
Siraj Muhammad

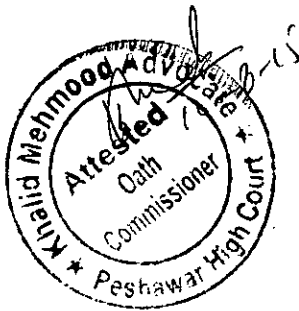
THROUGH:


(M. ASIF YOUSAFZAI)
&

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.




Deponent

Appellant present with Counsel.
Heard by D.B. Arguments Convincing
for an early date. To be fixed
in the month September. Notice
to all concerned.

25/8/2015