

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1188/2022

Asjad Farooq

Appellant

Versus

Govt of Khyber Pakhtunkhwa
through Secretary C&W and others

Respondents

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Deponent



Saeed Ullah (BPS-17)
Sub Divisional Officer-1
C&W Building Division Kohat

①

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR..

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3119

Dated 23/5/2023
(Appellant)

SERVICE APPEAL NO. 1188/2022

Asjad Farooq _____

VERSUS

- | | | |
|----|--|-------------|
| 1. | Secretary C&W Peshawar. | Respondent. |
| 2. | Chief Engineer (South-I) C&W Peshawar | Respondent. |
| 3. | Executive Engineer Building Division Kohat | Respondent. |
| 4. | Superintending Engineer C&W Circle Kohat. | Respondent |

PARAWISE COMMENTS ON BEHALF OF RESPONDENT 1 TO 4

PRILIMANARY OBJECTION.

1. That the appellant has no cause of action or locus stand..
2. That the appellant has been stopped by his own conduct to file the appeal.
3. That the appeal is not maintainable under section -4 of the Service Tribunal.
4. That this Hon. Tribunal has no jurisdiction to entertain the appeal.
5. That the appellant has not come to Tribunal with clean hand.

RESPECTFULLY SHEWETH

1. Para -1 is correct that he was appointed as Naib Qasid but his performance of duty was not satisfactory as is evident from various notices issued to him
2. As explained in Para 1, the official was not regular in attendance of duty and was served with various notices as mentioned in this office letter NO. 316/3-EG dated 13.06.2022 (Copy enclosed as annexure -A)
3. Para -3 is incorrect. Due to his willful absence from duty action was taken against him under E&D Rules under sub Rule (9) PROCEEDING IN CASE OF WILLFULL ABSENCE (Copy enclosed as Annexure -B) and his services terminated vide this office letter No. 84/3-EG dated 7.02.2022 duly communicated to the appellant vide S NO 3 of the orders as provided by the Appellant with the Appeal(copy attached -C)
4. It is correct that he submitted appeal to the Chief Engineer (South-1) C&W Department, Peshawar and accordingly the appellant was directed to furnish reply of the reasons as pointed out in the letter NO. 313/2/7-E dated 14.06.2022 (Copy enclosed as Annexure "D")
5. His appeal was dismissed on the grounds as stated in the letter issued by the Chief Engineer (Southy-1) C&W Department Peshawar vide letter No. 366/2/7-E dated 14.07.2022 i.e. Appeal was time barred and not based on facts (Copy enclosed as Annexure "E")
6. As explained Above.
7. As explained Above.

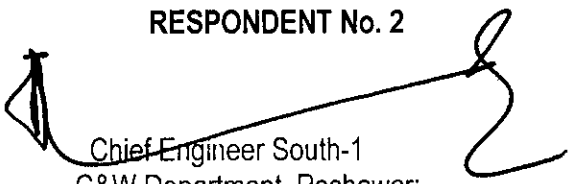
- A. Incorrect. The office order regarding of termination his services was issued after completion of all formalities as required under E&D Rules vide Sub Rule 9 and hence the action is not illegal.(Copy already attached as annexure B)
- B. Incorrect. The office order has been issued as per rules after maintaining all kind of justice as is evident from the notices issued to the Appellant
- C. Incorrect. All true and actual position of the absence has already been reflected in the office order issued vide this office No. 84/3-EG dated 07/02/2022 and handed over to appellant accordingly and correct action has been taken against the appellant as per sub Rule (9) of the E&D Rules as is evident from the notices issued to the appellant.
- D. Incorrect. The statement of the appellant is wrong. He never bother to provide the Medical Certificate issued by the MS DHQ Kohat & the same has been declared fake & bogus by the Medical Supdt: DHQ Kohat vide letter No. 3212/F-5A dated 01.07.2022. The appellant authority has checked this reason and intimated to the appellant vide Chief Engineer (South -1) C&W Department Peshawar letter No.366/2/7-E dated 14.07.2022 vide para vii of the letter.
- E. No charge sheet, statement of allegations or show cause Notice is required in case of willful absence as per E&D Rule -9 and formalities completed as explained in Para A.
- F. Termination or removal from service is same penalty and there is no difference in the penalty.
- G. Incorrect. The appellant has never submitted Medical Certificate for Leave to this office and also the certificate is bogus as explained in para -D
- H. Incorrect. The order has been handed over to the appellant in time
- I. Incorrect. No. inquiry is required as explained in Parra E.
- J. Incorrect. The proceeding against the appellant was made as per E&D Rules -9 and his performance of duty was not satisfactory as evident from various notices issued to the appellant vide this office letter N. 316/3-EG dated 13.06.2022 (Copy already enclosed as annexure -A)
- k. The Office order was provided to the appellant by hand and he was also informed telephonically.
- L. The office order was delivered to him by hand as evident from S.No.4 attached by the appellant with the Appeal.
- M. Para M is incorrect. In this period there was no corona and hence the contents are not based on fact
- N. Personal hearing is not required as explained in Para C to L being willful absence from duty.

In view of the above it is requested that the petition may please be dismissed

RESPONDENT No 1


Secretary to Government of Khyber Pakhtunkhwa
Communication and Works Department Peshawar.


RESPONDENT No. 2


Chief Engineer South-1
C&W Department, Peshawar;.

RESPONDENT No. 3


Executive Engineer
C&W Building Division Kohat

RESPONDENT No. 4


Superintending Engineer
C&W Circle, Kohat.

3

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1188/2022

Asjad Farooq

Appellant

Versus

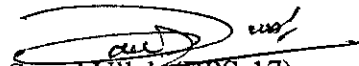
Govt of Khyber Pakhtunkhwa
through Secretary C&W and others

Respondents

AFFIDAVIT

I, Saeed Ullah, Sub Divisional Officer-1 (BPS-17) C&W Building Division Kohat hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent

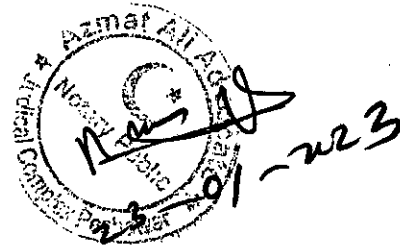


Saeed Ullah (BPS-17)

Sub Divisional Officer-1

C&W Building Division Kohat

ATTESTED





Annex - A (4)

OFFICE OF THE EXECUTIVE ENGINEER
BUILDING DIVISION KOHAT

Ph: No. 0922-860078

FAX 0922-860052

Email cwdkohat@gmail.com

No. 316/3.E4

Dated 13 / 6 / 2022

To

The Administrative Officer
Office of the Chief Engineer (South-1)
C&W Department, Peshawar.

Subject:

TERMINATION OF SERVICE OF MR. ASJID FAROOQ NAIB QASID.

As desired the following record of the subject cited is sent herewith for further necessary action.

1. This office letter No. 261/3-EG dated 7.6.2018
2. This office letter No. 930/3-EG dated 29.08.2018
3. This office letter No. 1010/3-EG dated 6.9.2018
4. This office letter No. 255/1-Q dated 12.10.2018
5. This office letter No. 342/3EG dated 24.10.2018
6. This office letter No. 507/3-EG dated 7.11.2018
7. This office letter NO. 122/3-EG dated 13.2.2019
8. Chief Engineer (Centre) C&W Peshawar letter No. 169-E/341/CEC/C&WD dated 18.2.2019
9. This office letter Nol 1261/3-EG dated 24.10.2019
10. This office letter No. 939/3-EG dated 12.6.2020
11. This office letter No. 1146/3-EG dated 1.7.2020
12. This office letter No. 494/3-EG dated 5.4.2021
13. This office letter Nol.631/3-EG dated 5/2021
14. This office letter NO: 354/3-EG dated 6.10.2021
15. This office letter No. 771/3-EG dated 13.1.02022 regarding Notice of absentee sent to Director of Information.
16. Absentee Notice published in daily AAJ dated 17.1.2022
17. Application of Asjid Farooq dated 24.1.2022
18. Absentee Notice in Urdu No 20/3-EG dated 25.1.2022
19. Termination order No. 84/3-EG dated 1.02.2022

D.A/As above.

Copy to the :


EXECUTIVE ENGINEER

1. The Chief Engineer (South -1) C&W Department, Peshawar for information please.

EXECUTIVE ENGINEER

محکمہ سی ایف ڈی ایڈ ڈیویڈیہ پختونخوا ایشیا ور بلڈنگ ڈویژن کوہاٹ

نوٹس غیر حاضری

(5)

احمد طارق ولد فیض قیصر صاحب قاصد بلائنگ ڈویژن کوہاٹ محلہ حافظ آباد نئی آبادی جڈی ٹیشن کوہاٹ کئی دنوں سے ڈیوٹی سے غیر حاضر ہے۔ جس کی وجہ سے اس کو کئی رجسٹرڈ فلپ کر کے پتے پر بھیج دیئے گئے ہیں اور آخری نوٹس نمبر 354/3-E dated 6.10.2021 بتایا گیا ہے۔ کہ ڈیوٹی پر حاضر ہو جائے۔ اور غیر حاضری کی وجوہات بیان کرے۔ مگر ابھی تک ڈیوٹی پر حاضر نہیں ہوا۔ لہذا E&D رولز سب رولز کے تحت آپ کو اطلاع دی جاتی ہے۔ کہ 15 پھر وہ دن کے اندر حاضر ہو جائیں اور اپنی غیر حاضری کی وجوہات بیان کرے۔ ورنہ آپ کے خلاف یکطرفہ کارروائی عمل لائی جائے گی۔

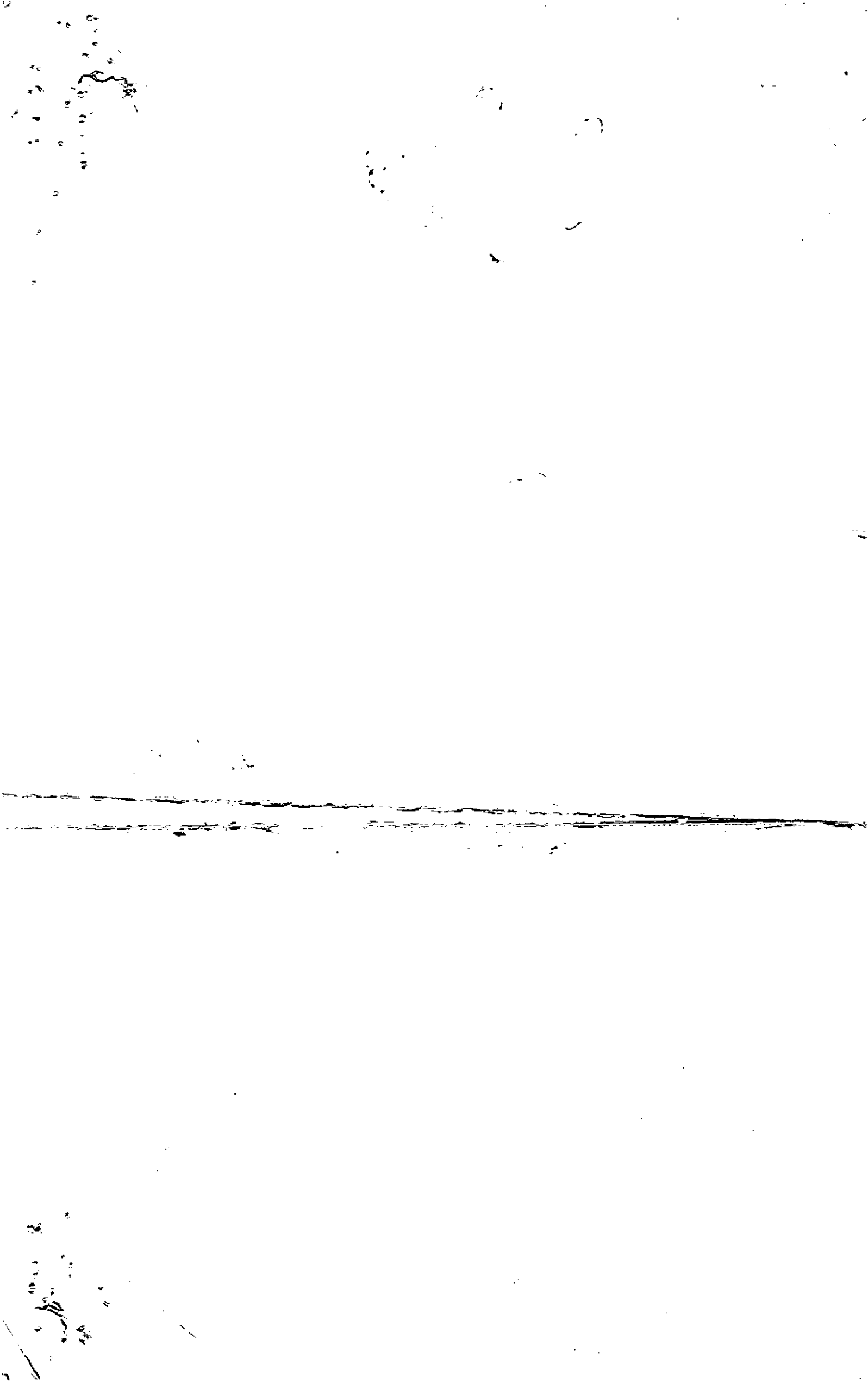
بجسٹریا گرو کیٹیگوری انجینئر بلائنگ ڈویژن کوہاٹ

"Take special care of special persons"

گوارا ایس اے ان
CORRUPTION
Free Pakistan
کریمنل کی پاکستان

INF(P)276/2022

۱۹ جنوری 2022 بروز بدھ ڈرہلی ایکسپریس اخبار



EXTRAORDINARY
GOVERNMENT



Annex - B
REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 16TH SEPTEMBER, 2011.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 16th September, 2011.

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

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

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

(3) These shall come into force at once.

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

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

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

(f) "competent authority" means-

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

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

(g) "corruption" means-

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

(h) "Governor" means the Governor of the Khyber Pakhtunkhwa;

(i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;

(j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;

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

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

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

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or

- (i) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

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

(a) Minor penalties:

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

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale.

- (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order.

(b) Major penalties:

- (i) reduction to a lower post or pay scale or to a lower stage in a time scale.
- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

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

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

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

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

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

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
 - (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
 - (iii) a Government servant is involved in subversive activities; or
 - (iv) it is not reasonably practicable to give such an opportunity to the accused; or
- (b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

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

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

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

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

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

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

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

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;

- 18
- 1
- 17
- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
 - (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

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

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

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

- (c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

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

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

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

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

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

(b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him; provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;

(c) provide a copy of the inquiry report to the accused; and

(d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

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

(i) exonerate the accused if charges had not been proved; or

(ii) impose any one or more of the penalties specified in rule 4 if charges have been proved.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing-

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or
- (c) modify the orders or reduce the penalty.

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

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

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

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

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

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

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

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

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

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

SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(18) Annex-C



OFFICE OF EXECUTIVE ENGINEER
BUILDING DIVISION KOHAT

Ph: No. 0922-860078

FAX 0922-860052

Email cwdkohat@gmail.com

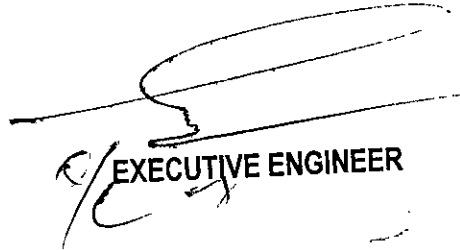
No 84/3-Eg

Dated 07 10 2022

OFFICE ORDER

Mr. Asjid Farooq Naib Qasid of this Division was served with various notices to perform duty regularly but he was still continuously absent from duty. He was therefore directed through publishing Notice in the daily News Paper AAJ dated 17.1.2022 & daily express dated 19.1.2022 vide No. INF(P)/276/22 as per Sub Rule 9 of E&D Rules to attend the duty and explain the reasons of absence. Mr. Asjid attended the office on 24.1.2022 and submitted application stating that from the date of his appearance he will attend the office regularly in which he failed again. At last he was further directed vide Notice No.20/3- EG dated 25.1.2022 to attend duty upto 2.2.2022 but he did not respond till date.

Therefore in view of the above, the services of Mr. Asjid Farooq Naib Qasid is hereby terminated with immediate effect in the best interest of Government/public..


EXECUTIVE ENGINEER

Copy to :

1. The Sub Divisional Officer Building Sub Division No. 1 Kohat for information.
2. The Divisional Accounts Officer Local.
3. Mr. Asjid Farooq for information.


EXECUTIVE ENGINEER.



OFFICE OF THE CHIEF ENGINEER (SOUTH-I)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR
Email:- c.engineer.fata@gmail.com Phone:- 091-9211725 / 091-9211482 / 091-9210428

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Amex-0

To,

No 313/217-E
Dated Peshawar the 14/06/2022

✓ Mr. Asjid Farooq (Ex-Naib Qasid), C&W Department.
Resident of Shakar Darra, Kohat.
CNIC No. 14301-2444705-1
Cell # 0334-9258574

Subject: - APPEAL FOR REINSTATEMENT IN SERVICE

1. This is with reference to your appeal dated 30.05.2022 submitted before the Secretary to the Govt. Khyber Pakhtunkhwa, C&W Department Peshawar for your reinstatement in service.
2. Perusal of your application and submitted documents reveals that your services were terminated on 07.02.2022 whereas you submitted appeal on 03.05.2022 which is time barred as appeal period is 30-days. You are therefore, directed to explain the reasons of delay.
3. Also, explain reasons as to why the OPD chit, medical leave certificate granted by DHQ Teaching Hospital KDA Kohat dated 23.01.2022 and Lab. test dated 23.01.2022 were not submitted to the office of the Executive Engineer Building Division Kohat at the then, when absentia notice was published against you and subsequently you attended the office on 24.01.2022.
4. Your reply should reach to the undersigned within 07-days of the receipt of this letter but not later than 15-days of its receipt.

H/02

XFEV

(Engr. Shakir Habib)
Chief Engineer (South-I)
C&W Department Peshawar
(Appellate Authority)

Copy forwarded to the:-

1. Superintending Engineer C&W Circle Kohat.
2. Executive Engineer Building Division Kohat with the direction to serve a copy of this letter on the aforesaid Ex-Naib Qasid in case not deliver through post.



OFFICE OF THE CHIEF ENGINEER (SOUTH-I)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

Email:- c.engineer.fata@gmail.com Phone:- 091-9211725 / 091-9211482 / 091-9210428

Amel - E

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No 366/2/7-E

Dated Peshawar the 14/07/2022

To,

Mr. Asjid Farooq s/o Faiz Qaiser
(Ex-Naib Qasid), Building Division Kohat.

Present Address

Resident of Mohallah Hafiz Abad,
New Abadi, Jundi Station, Kohat.

Address as per appeal

Mr. Asjid Farooq s/o Faiz Qaiser
Shakar Darra, Kohat.

CNIC No. 14301-2444705-1
Cell # 0334-9258574

Subject: - **APPEAL FOR REINSTATEMENT IN SERVICE.**

Your appeal dated 30.05.2022 addressed to the Secretary to Govt. of Khyber Pakhtunkhwa C&W Department regarding your reinstatement in service is hereby rejected on the following grounds: -

- i) The medical prescriptions, admission chits and advice for medical rest which you submitted in support of appeal have been declared **fake** and **bogus** by the Medical Superintendent DHQ Teaching Hospital Kohat vide his letter No. 3212/F-5A dated 01.07.2022.
- ii) That your instant appeal is also **Time Barred**.
- iii) Your reply to the queries/observations raised vide this office letter No. 313/2/7-E dated 14.06.2022 is not convincing.
- iv) In the reply dated 17.06.2022 you assumed, that no charge sheets/SoAs were issued and no inquiry conducted. In this connection, it is clarified that in the case of wilful absence from duty under Rule-9 of Government Servant E&D Rules, 2011, no Charge Sheet/SOAs or inquiry is needed/required.
- v) In your reply, you relied on 02-No. decisions of Khyber Pakhtunkhwa Service Tribunal where the action was initiated by the authority under the Police Rules-1975 as both the cases are related to the Police Department, whereas your case is decided under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
- vi) As per record provided by the Executive Engineer Building Division Kohat, you were not punctual in performance of your official duty w.e.f June, 2018 till the date of your termination/removal from service.
- vii) Your application dated 24.01.2022 reveals that during your absence period you took care of your ailing father suffering from heart disease, whereas your stance was changed in your appeal dated 03.05.2022 mentioning therein that you Mr. Asjid Farooq are suffering from Hepatitis-B Disease.

(Engr. Shakir Habib)
Chief Engineer (South-I)
(Appellant Authority)

Copy forwarded to the: -

1. Superintending Engineer C&W Circle Kohat.
2. Executive Engineer Building Division Kohat.
3. P.S to Secretary C&W Department Peshawar w/r to remarks/orders of worthy Secretary C&W Department Peshawar recorded on the face of appeal (copy attached) for kind information of Secretary C&W Department.

Chief Engineer (South-I)
(Appellant Authority)