

18.12.2020

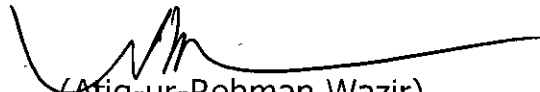
Appellant with counsel present.

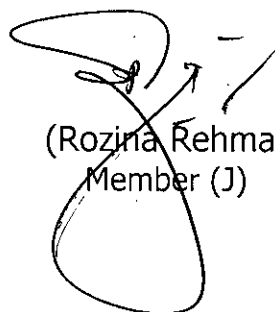
Riaz Khan Paindakheil learned Assistant Advocate General alongwith Shahab ud Din Assistant Commissioner, Ubaid Ullah Superintendent and Azmat Ullah D.K for respondents present.

Vide detailed judgment of today of this Tribunal placed on file of appeal No.4924/2020, instant service appeal stands accepted and the appellant stands reinstated in service with all back benefits. With no order as to costs. File be consigned to the record room.

ANNOUNCED.

18.12.2020


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


(Rozina Rehman)
Member (J)

11.11.2020

Junior to counsel for appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 04.12.2020 for hearing before the D.B.



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



Chairman

04.12.2020

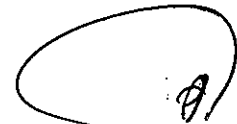
Appellant present through counsel.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Sajjad ADK for respondents present.

Arguments heard. To come up for order on 15.12.2020 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

15.12.2020

Appellant with counsel present.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Muhammad Ali Asghar Deputy Commissioner, Shahab ud Din Assistant Commissioner and Azmat Ullah D.K for respondents present.

File to come up alongwith connected appeal No.4924/2020 on 18.12.2020 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

10.08.2020

Counsel for the appellant and Addl. AG alongwith
Qaizarud Din, ADK (Revenue) for the respondents present.

Representative of the respondents requests for further
time to submit written reply/comments. Last opportunity is
granted to the respondents for submission of requisite
reply/comments on 30.09.2020 before S.B.


Chairman

30.09.2020

Counsel for the appellant and Addl. AG alongwith
Azmatullah, D.K for the respondents present.

Representative of respondents states that reply has
been prepared but is yet to be signed by the
respondent(s). He, therefore, requests for adjournment.

On 10.08.2020 a similar request was made on behalf
of the respondents and the matter was adjourned but as
last opportunity.

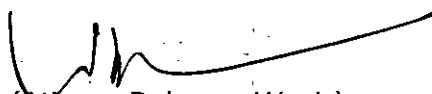
Instant appeal is, therefore, posted for hearing by a
D.B on 27.10.2020. The respondents may submit the
reply/comments in the meanwhile, if they desire to.



Chairman

27.10.2020

Junior to counsel for the appellant and Addl. AG
alongwith Sajjed Khan, ADK for the respondents present.

Parawise comments on behalf of respondents 1 & 2
have been submitted. Placed on record. To come up for
hearing on 11.11.2020 before the D.B. The appellant may
furnish rejoinder in the meanwhile if so advised.


(Atiq-ur-Rehman Wazir)
Member


Chairman

11.06.2020

Counsel for the appellant present.

Contends that departmental inquiry against the appellant was dispensed with before passing of impugned order awarding major penalty against him but without assigning any reason. Further contends that in a number of judgments, the Apex Court has repeatedly held that in cases where major penalty is awarded to a civil servant, a proper inquiry is all the more necessitated.

Keeping in view the available record and submissions by the learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 03.07.2020 before S.B.

Appellant Deposited
Security Process Fee

03/07/2020

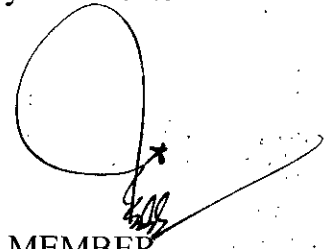


Chairman

03.07.2020

Counsel for the appellant and Addl: AG alongwith Mr. Azmatullah, District Konongo for respondents present. Written reply on behalf of respondents not submitted. Requests for time to submit the same on the next date.

Adjourned to 24.07.2020 for written reply/comments before S.B.



MEMBER

24.07.2020

Mr. Noor Muhammad Khattak, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Qabar-ud-Din, ADC Revenue are also present.

Representative of the department seeks short adjournment to submit the requisite reply/comments. May do so on next date of hearing. Adjourned to 10.08.2020 for submission of written reply/comments before S.B.





(MUHAMMAD-JAMAL-KHAN)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 4942 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/06/2020	<p>The appeal presented today by Mr. Noor Muhammad Khttak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/06/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 4942 /2020

MUHAMMAD IMRAN

VS

REVENUE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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3	Record	B	6- 10.
4	Order dated 28.11.2019	C	11.
5	Impugned order	D	12- 13.
6	Departmental appeal	E	14- 17.
7	Vakalat nama	18.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 4942 /2020

Khyber Pakhtukhwa
Service Tribunal

Diary No. 4204

Dated 2-6-2020

Mr. Muhammad Imran, Ex-Patwari,
o/o the Deputy Commissioner, Peshawar..... **APPELLANT**

VERSUS

- 1- The Commissioner, Peshawar Division, Peshawar.
- 2- The Deputy Commissioner, Peshawar.

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ORDER DATED 13.02.2020 WHEREBY
MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN
IMPOSED UPON THE APPELLANT AND AGAINST NO
ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:

That on acceptance of this service appeal the impugned order dated 13.02.2020 may very kindly be set aside and the appellant may kindly be re-instated into service with back benefits. Any other remedy which this August Tribunal deems fit that may also be granted to the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to present appeal are as under:

- 1- That appellant was appointed as Patwari in the respondent Department on the proper recommendation of the Departmental selection committee. That during service the appellant served the respondent Department as Patwari quiet efficiently and up to the entire satisfaction of his superiors.
- 2- That during service as patwari in the patwar halqa concerned the appellant was served with a show cause notice wherein it were alleged that:-

Filed to-day
Registrar
2/6/2020

- ✓ (a) ***That you have resorted to illegal act of orchestrating strike in the district, thereby causing difficulties for the General Public in obtaining land documents for courts, criminal cases state matters.***
- (b) ***That you act has instigated patwaris from refusing to attend courts of law.***
- (c) ***That your act is causing financial loss to the Government Treasury as mutations have stopped and Government taxes are not being realized.***
- (d) ***That your act falls in the definition of insubordination and causing mutiny and is bringing bad name to Government.***

Copy of the show cause notice is attached as annexure **A.**

3- That in response to the said show cause notice the appellant submitted his detail reply and denied all the allegations leveled against him rather at that relevant time the appellant was behind the bar on account of FIR lodged by the anti corruption Establishment. That in support of his stance taken in the reply the appellant also submitted documentary proofs. Copies of the record are attached as annexure **B.**

4- That in response the respondent No.2 issued the order dated 28.11.2019 whereby minor penalty of censure has been imposed on the appellant. Copy of the order dated 28.11.2019 is attached as annexure **C.**

5- That astonishingly the respondent No.2 on the basis of said show cause notice and inspite of knowing the fact that already vide order dated 28.11.2019 minor penalty has been imposed on the appellant issued the impugned order dated 13.02.2020 whereby major penalty of dismissal from service has been imposed on the appellant in utter violation of the principle of double jeopardy. Copy of the Impugned order is attached as annexure **D.**

6- That appellant feeling aggrieved from the impugned order dated 13.02.2020 filed departmental appeal to the appellate authority i.e. respondent No.1 but no response has been received so far. Copies of the Departmental appeal is attached as annexure **E.**

7- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst others.

ON GROUNDS:

- A- That the impugned order dated 13.02.2020 is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department 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 Islamic Republic of Pakistan, 1973.
- C- That no charge sheet and statement of allegation have been served upon on the appellant before issuing the impugned order dated 13.02.2020.
- D- That no opportunity of personal hearing/defense has been provided to the appellant before issuance of the impugned order dated 13.02.2020 and as such the appellant has been condemned un heard.
- E- That the respondents acted in arbitrary and malafide manner by issuing the impugned order dated 13.02.2020 without fulfilling the codal formalities, hence the impugned order dated 13.02.2020 is not tenable and liable to be set aside.
- F- That no regular inquiry has been conducted before issuance of the impugned order dated 13.2.2020 which is as per Supreme Court judgments is necessary in punitive actions against Civil Servant.
- G- That it is also the consistent view of the Apex Court that major punishment cannot be imposed on the basis of single show cause notice.
- H- That prior to show cause notice no fact finding inquiry has been conducted in the matter to dig out the real facts and figures, therefore the impugned order dated 13.2.2020 is void ab initio in the eye of law and rules.

I- That in the instant case the appellant has been made escape goat and as such the impugned order dated 13.2.2020 issued by the respondent No.2 is against the law and rules.

J- That it is well settled law that no one should be punished twice for the one and the same offence, therefore in light of the above principle the impugned order dated 13.2.2020 is not tenable and liable to be set aside.

K- That the appellant seeks permission to adduce any other ground and proof at the time of regular hearing.

It is therefore, most humbly requested that the appeal of the appellant may very kindly be accepted as prayed for.

Dated: 29.05.2020

APPELLANT


MUHAMMAD IMRAN

THROUGH:


NOOR MUHAMMAD KHATTAK


MIR ZAMAN SAFI

&


**AFRASIAB KHAN WAZIR
ADVOCATES**

Show-Cause Notice

I, Muhammad Ali Asghar, Deputy Commissioner Peshawar, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Discipline Rules 2011, do hereby serve you, Mr. Sadaqatullah, Patwari presently serving in Litigation Section, as follows:

A-5

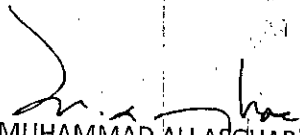
1. I am satisfied that you have committed the following acts /omissions specified/falls under the purview of Section 3 of the said Ordinance:

- (a) That you have resorted to illegal act of orchestrating strike of Patwaris in the district, thereby causing difficulties for the general public in obtaining land documents; for courts, criminal cases and other state matters.
- (b) That your act has instigated Patwaris from refusing to attend courts of law.
- (c) That your act is causing financial loss to the Government Treasury as mutations have stopped and Government taxes are not being realized.
- (d) That your act falls in the definition of insubordination and causing mutiny; and is bringing bad name to Government.

2. On the basis of clear violations committed by you, as duly observed by undersigned, I am satisfied to dispense with the requirements of inquiry, as provided under Rule 5(a) of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules 2011.

3. You are, therefore, required to show cause as to why a penalty as provided under Rule-4 including major 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 seven 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.


(MUHAMMAD ALI ASGHAR)
DEPUTY COMMISSIONER
(Competent Authority)

ATTESTED


B-6

In the Court of Special Judge, Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

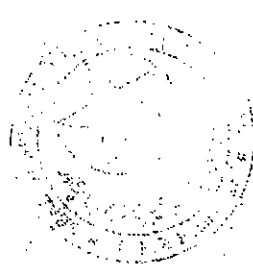
B.A No.32 of 2020.
Date of Original Institution. 14-02-2020.
Date of receipt to this court. 18-02-2020.
Date of Decision 19-02-2020.

Muhammad Imran.

(Accused/petitioner)

Versus

The State.



Case FIR No.01 dated 11-02-2019 u/s 418/419/420/468/471 PPC
read with section 5(2) PC Act of P.S. ACE Peshawar.

Order dated
19.02.2020

Accused/petitioner Muhammad Imran through counsel Mr. Gohar Ali, advocate and Dy: P.P. Azhar Ali for state present. Complainant despite of service not present.

The above named accused is arrested in Case FIR No.01 dated 11-02-2019 u/s 418/419/420/468/471 PPC read with section 5(2) PC Act of P.S. ACE Peshawar and by way of this petition requested for his release on post arrest bail.

Arguments heard and file perused.

Instant case was registered as a result of application filed by complainant Subhanullah before the Director, ACE on the allegations that the complainant had purchased 5 marla land vide mutation 2337 dated 28-06-2013 from Sufi Muhammad Hussain at the sale consideration of Rs.5,00,000/- and the possession was handed over to him. He had constructed house on the said plot and later on vide sale agreement dated 05-04-2017 had sold the said plot/house at the cost of Rs.72,00,000/- to Irfanullah (do-accused already on bail) out of which Rs.10,00,000/- were paid to him and the remaining amount of Rs.62,00,000/- was supposed to

Verified to be true

ATTESTED

[Signature]
Court of Special Judge
Anti-Corruption

19/2/2020

ATTESTED

[Signature]



GOVERNMENT OF PAKISTAN
NATIONAL ACCOUNTABILITY BUREAU
PDA COMPLEX BLOCK-III PHASE-V HAYATABAD
KPK PESHAWAR

7

Subject: Investigation against Muhammad Imran Patwari, Ejaz Afridi (Private Person) and others regarding Corruption and Corrupt Practices by illegally grabbing of Railway Land (MES # 122667)

GROUNDS FOR ARREST

1. You, Muhammad Imran S/o Fida Muhammad, R/o: Kandi Payan, P/o Peshawar University, Pishtakhara Bala, Tehsil & District, Peshawar (CNIC No. 17301-5355264-5), have committed the offence of corruption & corrupt practices cognizable under NAO 1999 in the following manner:

a. You, being Patwari, Mouza Tehkal Bala, with connivance of accused Ejaz Afridi, have committed the offence of Misuse of authority / corruption & corrupt practices regarding grabbing of Railways Department Commercial Land / Shops numbering 78 by accused Ejaz Afridi, out of which 48-x shops were constructed on the spot by Railway Department and also involved in manoeuvring the fake and fabricated documents / record in order to favor the accused Ejaz Afridi and thereby caused a colossal loss to the public exchequer.

2. You are, therefore, being arrested in pursuance of warrant of arrest issued by competent authority.

Muhammad Fahad Khan
Muhammad Fahad Khan
Dy. Dir. / Investigation Officer
IW-II, NAB KP

Copy Received:

Muhammad Imran
Muhammad Imran S/o Fida Muhammad

ATTESTED

MJ

IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. _____/2019

Muhammad Imran: PETITIONER

VERSUS

Chairman, NAB & others. RESPONDENTS

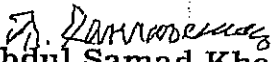
ADDRESSES OF THE PARTIESPETITIONER:

Muhammad Imran S/o Fida Muhammad R/o Kandi Payan,
P.O Peshawar University, Pishtakhara Bala, Tehsil & District
Peshawar. Presently in Judicial Lockup Central Jail
Peshawar.

RESPONDENTS:

1. Chairman, National Accountability Bureau, Constitution Avenue, Islamabad.
2. Director General (NAB), Khyber Pakhtunkhwa, Block-III, PDA Complex, Phase-V, Hayatabad, Peshawar.
3. Deputy Director NAB (KP)/ Investigation Officer (Muhammad Fahad Khan), Block-III, PDA Complex, Phase-V, Hayatabad, Peshawar.
4. Deputy Director (Coord) for Director IW, National Accountability Bureau, Khyber Pakhtunkhwa, Block-III, PDA Complex, Phase-V, Hayatabad, Peshawar.
5. The State through Advocate General, Khyber Pakhtunkhwa Peshawar High Court Building, Peshawar.

Petitioner
Through


Abdul Samad Khan
Senior Advocate,
Supreme Court of Pakistan

Dated: 16.10.2019

ATTESTED

CERTIFIED TO BE TRUE COPY

Committee
Peshawar High Court, Peshawar
Authorised Under Article 217 of
the Constitution of Pakistan

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No. 5511-P/2019

Muhammad Imran

Versus

Chairman NAB & others

Date of hearing 06.11.2019

Petitioner (by) Mr. Abdul Samad Khan, Advocate

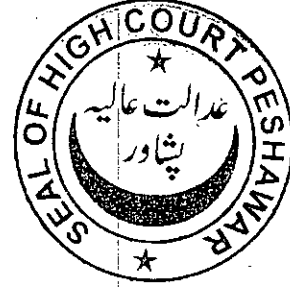
Respondent (by) Mr. Muhammad Riaz Mohmand, ADPG

JUDGMENT

MUSARRAT HILALI, J. Petitioner, through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has prayed for his release on bail till final disposal of the case.

We have heard the arguments of the learned counsel for the parties and have gone through the record.

2. In the instant case, allegations against the petitioner are that he being Patwari, Mouza Tehkal Bala, with connivance of accused Ejaz Afridi, has committed the offence of misuse of authority/corruption & corrupt practices regarding grabbing of Railways Department commercial land/shops numbering 78 by accused Ejaz



9

ATTESTED

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ATTESTED

EXAMINER

10

Afridi, out of which 48 x shops were constructed on the spot by Railway Department and also involved in maneuvering the fake and fabricated documents/record in order to favour the accused Ejaz Afridi and thereby caused a colossal loss to the public exchequer.

3. Obviously, the entire case of the petitioner is based on documentary evidence which has already been taken into possession by the prosecution and is also available on the Court file; therefore, in the nature of this case there is no possibility of petitioner's tempering with the evidence if he is released on bail.

4. In view of the above, this writ petition is allowed and the petitioner is granted bail.

5. Above are the reasons for the short order of even date.

CERTIFIED TO BE TRUE COPY

Examiner
Sindh High Court, Freshwater
Authorised Under Article 87 of
the Constitution of Pakistan Order 1984

19 NOV 2019

ATTESTED

Announced
06.11.2019

(DB) Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Justice Musarrat Hilal

Noor Shah

14841

No. of Application 19/11/19

No. of Pages 3

Copy fee 300

Preparation of Copy 19/11/19

Recovery of copy 19/11/19



عمران خان

11

THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, DCPeshawar

No.656/DK

Dated:13-February-2020

ORDER:

WHEREAS, Mr. Muhammad Imran S/o Fida Muhammad Patwari was served upon a Show Cause Notice vide No.44576/AC(P) dated 26-09-2019 for illegal strike of Patwaris refusing to attend court of law and instigating other Patwaris to perform official duties resultantly creating problems for general public and causing financial loss to the govt. exchequer.

AND WHEREAS, the accused official sought mercy from the competent authority on 28-09-2019 and assured this office that they would end the strike forthwith, obey all lawful commands of the revenue administration and refrain from all such activities which are aimed at subverting the legal commands of the Government or its authorized officers and causing distress to public.

AND WHEREAS, on 10-02-2020, the accused official assembled alongwith other Patwaris in Tehsil building and started Chanting. Slogans against Provincial Govt. and their superior officers and refused to perform their official duties regarding Polio/Disaster Relief Activities and Tehsil Hazri/Darbar.

AND WHEREAS, on 12-02-2020, the accused official alongwith other Patwaris assembled in Tehsil building and started Chanting. Slogans against Provincial Govt. and their superior officers and refused to perform their official duties regarding Polio/Damage Assessment in Disaster Relief Operations and Tehsil Hazri/Darbar. The worthy Commissioner Peshawar Division also summoned Patwar Union and other Patwaris to his office and sensitized them of the mistake they were committing and blatant violations they committing. The worthy Commissioner directed them to forthwith resume official duties failing which strict action will be initiated against them.

AND WHEREAS, on 13-02-2020, a Revenue Tehsil Hazri was organized for the facilitation of the general public, upon the direction of the worthy Chief Minister Khyber Pakhtunkhwa and in line with Land Record Manual. All revenue staff was summoned in tehsil Peshawar alongwith revenue record. But the accused official failed to his presence in the Tehsil Hazri which is an act of gross misconduct, violation of official norm, subverting the lawful command of the Provincial GOvt and disobeying the official commands of superiors in Revenue hierarchy.

AND WHEREAS, the National Immunization Day (NID) Polio Campaign is commencing from 17-02-2020. Non-participation of the Patwaris in the campaign is likely to cause irreparable damage to the campaign. Already 100+ polio effected cases have been confirmed in Pakistan which has brought extreme embarrassment for the country.

AND WHEREAS, the accused official is blatantly challenging the law and causing obstruction in the executive functioning of the govt.

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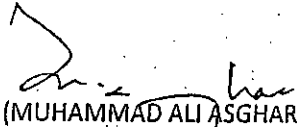
ATTESTED

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12

public excnquer causing embarrassment for the govt. and have raised the banner of mutiny according to which he lose all rights of personal hearing vide rule 5 (a) and rule 5(b)(ii) of the rules ibid.

NOW THEREFORE, vide detailed order placed on file and in exercise of the powers conferred under Rule-04(1)(b)(iv) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, I Muhammad Ali Asghar, Deputy Commissioner Peshawar is competent authority, hereby impose a major penalty of *Dismissal from service* upon Mr. Muhammad Imran S/o Fida Muhammad, Patwari with immediate effect.


(MUHAMMAD ALI ASGHAR)
DEPUTY COMMISSIONER

Endst: No. and Date Even:

- (i) Commissioner, Peshawar Division, Peshawar.
- (ii) Addl. Deputy Commissioner, Peshawar.
- (iii) Addl. Assistant Commissioner (Rev) to assign the charge of Patwari Halqa to another suitable official in DC office and repot immediately.
- (iv) Accounts Officer of DC office for necessary action.
- (v) Mr. Muhammad Imran S/o Fida Muhammad, Ex-Patwari.


DEPUTY COMMISSIONER



13

THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, DCPeshawar

No. 3656 /DK

Dated: 28-November-2019

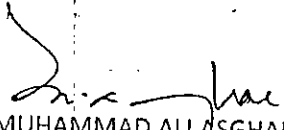
To

1. Mr. Imran, Patwari
2. Mr. Zarshad, Patwari
3. Mr. Sadaqatullah, Patwari
4. Mr. Asif, Patwari.

Subject: WARNING

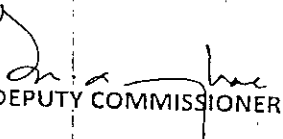
Reference your replies to the show cause notices and personal hearing held on 28-11-2019 in the matter.

You are warned to be careful in future and avoid any agitation, strike or disruption of official business. The written assurances submitted by you will be kept on record and any violation to this effect will lead to drastic action under Govt. of Khyber Pakhtunkhwa Efficiency & Disciplines Rules 2011.


(MUHAMMAD ALI ASGHAR)
DEPUTY COMMISSIONER

Endst: No. and Date Even:

- (i) Addl. Deputy Commissioner, Peshawar.
- (ii) Assistant Commissioner, Peshawar.
- (iii) Addl. Assistant Commissioner (Rev), Peshawar.


DEPUTY COMMISSIONER

ATTESTED



14

To

The worthy Commissioner
Peshawar Division.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 13/02/2020 OF THE DEPUTY COMMISSIONER PESHAWAR WHEREBY THE APPELLANT HAS BEEN ILLEGALLY DISMISSED FROM HIS SERVICES IN AN ARBITRARY AND ILLEGAL MANNER IN VIOLATION OF LAWS RULES AND PRINCIPLES OF NATURAL JUSTICE.

Prayers:

On Acceptance of this service appeal the impugned order dated 13/02/2020 my kindly be set aside and the appellant may kindly be reinstated along with all back benefits. Any other remedy specifically not prayed for may kindly be awarded in favour of the appellant.

Respectfully Sheweth;

The appellant submits as under:

1. That the appellant was appointed as patwari in the year 2012 and after his appointment the appellant performed his duty with great zeal, zest, honesty and to the entire satisfaction of his high ups.
2. That the appellant was surprised to receive the dismissal/impugned order dated 13/02/2020 on some baseless allegations .it is worth mentioned that prior to the impugned order no charge sheet show cause notice was issued served or any inquiry conducted against the appellant.(copy of the impugned order is annexure A).
3. That thereafter the appellant inquired from the DC office about any charge sheet show cause notice if issued wherein the appellant was informed that he was issued only a show cause notice and very astonishingly the appellant was shown a forged reply of the show cause notice with bogus signature of the appellant because the appellant was behind the bar at central jail Peshawar so all this shows the malafide on the part of competent authority then the appellant was awarded the minor penalty of warning (Censure) vide order Dated 28-11-2019 (copy of the Show cause Notice and Warning/censure are annexure-B & C)
4. That feeling aggrieved from the impugned order dated 13/02/2020, the appellant now filling this departmental appeal on the following grounds inter alia ;

GROUND:

ATTESTED



- A. That the impugned order is against the law, Facts ,Constitution, Principles of Natural justice, based on mala fide ,void ab anatio hence not sustainable in the eyes of Law.
- B. That no charge sheet statement of allegation issued/served on the appellant which is mandatory under E & D Rules 2011.
- C. That the appellant was condemned unheard as no opportunity of personal hearing or defence has been provided to the appellant by the competent authority which is fundamental right of the appellant.
- D. That neither statement of any witness has been recorded nor did the appellant was confronted with anything.
- E. That the appellant has not been confronted with any documentary or oral evidence and the appellant was treated under the law of jungle.
- F. That the appellant has been awarded double punishment on one show cause notice that is warning/censure and dismissal which amounts to double jeopardy which is violation of the constitution of Islamic Republic of Pakistan 1973.
- G. That the right of fair trial , which is a fundamental right as guaranteed by Article 10 A of the Constitution of Islamic Republic of Pakistan 1973,has not been provided hence the whole proceedings are liable to be set aside .the dictum has been laid down by Supreme Court in the judgment reported as "2016 SCMR 943".

In a recent judgment reported as"2020 PLCCS SINDH 67" High Court declared that even contract employee is entitled for Right of Fair trail but despite the fact that the appellant is a civil servant the same has been denied to the appellant.

- H. That the charges levelled against the appellants in Final Show cause Notice, are totally false detailed reply of the allegations are as under

- I. Resorting to illegal act of orchestrating strike of patwaries....

In reply to this charge it is stated that no date has been mentioned in the show cause notice that on which date this incident happened however neither I orchestrate strike of patwaries nor did I cause any difficulty for the public in obtaining land documents for any purpose. Bothe the allegations are denied to be self made concocted and without any proof. There is no single witness against the appellant. it is further to clarify that the appellant was arrested on dated 26/09/2019 by the NAB Authorities and then was released on bail by Peshawar High Court on

ATTESTED


06/11/2019.(Copy of the arrest Warrant and High Court Judgment are annexure D & E).

- II. Instigating patwaries for refusing from court of law..... this allegation is totally denied I never instigate any one for refusing from law court .I was behind the bar and there is no such evidence against the appellatant.
- III. (LOSS TO GOVERNMENT EXCHEQUER)
This allegation is denied as I never performed the above acts or any acts which could cause loss to the public exchequer.
- IV. INSUBORDINATION.....
I deny this allegation as I cannot even think of insubordination and causing mutiny i always obeyed my superiors and performed my duties in accordance with law.

Charges in the Impugned Order

The impugned order consist on some baseless charges totally different from the charges mentioned in the show cause notice and the reply is as

- I. Assembly on 10/02/2020, chanting against Govt and refusal to perform duties regarding Polio.....

With respect to this allegation it is stated that neither the appellatant took part in any such assembly nor did refuse to perform any duty assigned to the appellatant by superior.

- II. Assembly on 12/02/2020, chanting against Govt and refusal to perform duties regarding Polio.....

With respect to this allegation it is stated that neither the appellatant took part in any such assembly nor did refuse to perform any duty assigned to the appellatant by superior.

- III. Absence from Darbar on 13/02/2020.....

This allegation is denied as on 13/02/2020 the appellatant was arrested by the local police in a concocted case FIR No 01 dated 11/02/2020 hence non attendance of darbar was the result of the arrest and is not wilful.

- IV. Non participation in the polio campaign to be held on 17/02/2020

This is a very strange allegation the appellatant was dismissed on 13 /02/2020 for an event which will be occurred in future .it is very strange how a human know that an event will occur in future.

ATTESTED
M

- I. That the appellant has not violated any rules regulations or instruction of the provincial government nor did abuse his official authority.
- J. That all the allegations, both contained in the show cause notice or in the impugned order, are consist on factual controversy hence regular inquiry was required to prove the allegation however no regular inquiry was conducted.
- K. That though in the show cause notice the inquiry was dispensed with however no reason for dispensation was provided or mentioned therein hence the show cause notice by itself is in violation of R 5 read with R 7 of E & D Rules 2011.
- L. That it is a well settled principle of law that no one can become a judge in his own cause however the competent authority acted as complainant, witness as well as judge therefore the appellant was subjected to such an illegal penalty in a cruel manner.
- M. That it is consistent view of the superior court that major penalty cannot be imposed merely on issuing a show cause notice.
- N. That the appellant has been condemned unheard as no opportunity of personal hearing or defence has been provided to the appellant
- O. That the appellant has been subjected to discrimination as the appellant has been guaranteed equal protection of law and entitlement for due course of law however the same has been refused to the appellant thus Article 25 Of the constitution of Islamic Republic of Pakistan 1973 has been violated
- P. That since the illegal impugned order the appellant is jobless and the family of the appellant is facing miseries and starvations.
- Q. That the appellant seeks permission to adduce other grounds during course of final hearings.

It is therefore requested that appeal of the appellant may graciously be accepted as prayed for in the headings of appeal.

APPELLANT

Imran

Ex.Patwari

ATTASTED

m

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Muhammed Inuran (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Revenue Deptt: (RESPONDENT)
(DEFENDANT)

I/We Muhammad Inuran

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. ____/____/2020

Muhammad Inuran
CLIENT

Shahzullah Yousafzai
ACCEPTED
NOOR MOHAMMAD KHATTAK
SHAHZULLAH YOUSAFZAI

Mir Zaman Safi
MIR ZAMAN SAFI
&

Afrsiyab Khan Wazir
AFRSIYAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Appeal No.4942/2020

Mr. Muhammad Imran, Ex-Patwari, Peshawar

.....(Appellant)

VERSUS

1. The Commissioner Peshawar.
2. The Deputy Commissioner Peshawar

.....(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 & 2

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 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 in the present form.
5. That the instant appellant is barred by law.

OBJECTION ON FACTS.


1. Correct to the extent that he performed duty as Office Patwari in District Peshawar.
2. Correct.
3. Correct to the extent that reply to the Show Cause notice was submitted. As far as his statement is concerned about his arrest, the order of the Peshawar High Court Peshawar dated 06-11-2020 shown that he was bailed out on the said date and thus was surly involved in the agitation of 13-11-2020.
4. Incorrect. A warning was issued to him alongwith others directing to avoid any agitation, strike or disruption of official business otherwise drastic action will be taken under E&D Rules 2011. His written assurance was kept on record.
5. Incorrect. The appellant on 10-02-2020, assembled alongwith other Patwaris in Tehsil Building and started chanting, slogans against Provincial Govt. as well as their superior officers and refused to perform their official duties.. On 12-02-2020, again did the same thing and refused to perform duties regarding Polio/Damage Assessment in Disaster Relief Operations and on 13-02-2020 at the time of Tehsil Hazri again failed to make his appearance. His actions clearly speak about gross misconduct, violation of official norm and subverting lawful command of the Provincial Govt. as well as disobeying official instructions. Hence in violation of Government instructions, his own assertion and making panic in the office action was taken according to the E&D Rules 2011 and dismissal order was issued.

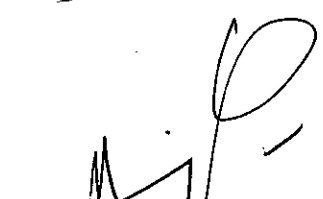
6. Incorrect. The matter was under consideration, but due to Corona pandemic the offices were closed by the Provincial Govt. hence no action could be taken.
7. Incorrect. The appellant has no justification to file the instant appeal.

GROUNDS

- A. Incorrect. The order was issued according to the E&D Rules 2011, keeping in view the grave misconduct of the appellant as explained in the dismissal order dated 13-02-2020.
- B. Incorrect. All the proceedings were conducted under E&D Rules 2011 and no law/rules have been violated rather instructions/laws of the Provincial Govt. were followed in letter and spirit.
- C. Incorrect. The inquiry was dispense with under section 5 of E&D Rules 2011, and violations of his own assertions, disobeying orders of Provincial Govt. as well as his superiors and creating a unlawful situation in the Tehsil Office were enough reasons to issue dismissal order dated 13-02-2020.
- D. Incorrect. He was already issued warning mentioned in Para-4 above and he assured in writing that he will not agitate and follow the instructions, but as he kept his behavior as violator of the law/instructions as mentioned in dismissal order dated 13-02-2020, no option was left but to dismiss him from service as per E&D Rules 2011.
- E. Incorrect. All the required rules/regulations were followed and formalities were fulfilled after which the dismissal order dated 13-02-2020 was issued.
- F. Incorrect. The inquiry was dispensed with as per section 5 of E&D Rules 2011 due to gravity of misconduct behavior of the appellant.
- G. Incorrect. All the prescribed procedure under E&D Rules 2011 were followed.
- H. Incorrect. As Para-F above.
- I. Incorrect. All the concerned officials were properly informed and Darbar occasion was publically advertised in daily newspapers.
- J. Incorrect. The appellant is making false excuses and have nothing in defense. He was issued only warning first time, to which he submitted his written assurance. As he failed to fulfill his own assurance, hence was dealt with according to the prescribed law.
- K. The respondents seek leave to raise additional grounds at the time of arguments.

It is therefore prayed before the honourable court that appeal in hand having no weight may very humbly be dismissed with cost.


Deputy Commissioner/Collector
Peshawar
(Respondent No.2)


Commissioner Peshawar Division,
Peshawar
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Appeal No.4942/2020

Mr. Muhammad Imran, Ex-Patwari, Peshawar

.....(Appellant)

VERSUS

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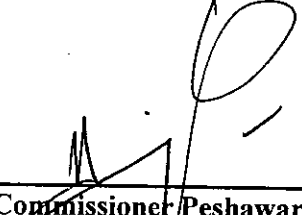
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(Respondent No.2)


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Peshawar
(Respondent No.1)