

18.12.2020

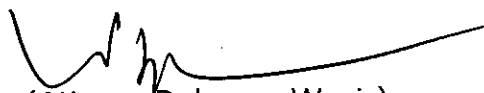
Appellant with counsel present.

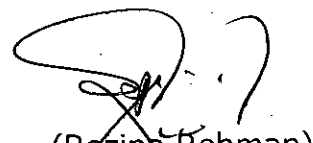
Riaz Khan Paindakheil learned Assistant Advocate General alongwith Shahab ud Din Assistant Commissioner, Ubaid Ullah Superintendent and Azmat Ullah D.K for respondents present.

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

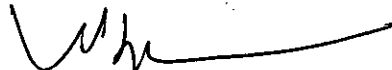
  
(Atiq-ur-Rehman Wazir)  
Member (E)

  
(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

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

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.

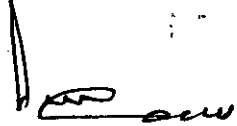

(MUHAMMAD JAMAL KHAN)  
MEMBER

Form- A

# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 4931 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/06/2020	<p>The appeal presented today by Mr. Noor Muhammad Khattak 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 on <u>11/06/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

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

APPEAL NO. 4931 /2020

**MOHAMMAD NADEEM**

**VS**

**REVENUE DEPTT:**

**INDEX**

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5	Impugned order	<b>E</b>	11- 12.
6	Departmental appeal	<b>F</b>	13- 20.
7	Vakalat nama	.....	21.

**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

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

Khyber Pakhtukhwa  
Service Tribunal

APPEAL NO \_\_\_\_\_/2020

Diary No. 4197

Mr. Mohammad Nadeem, Ex-Patwari,

Dated 01/06/2020

Halqa Gulozai Muhammadzai, 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 20.02.2020 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 20.02.2020 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 the 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 the appellant was served with a show cause notice dated 13.2.2020 where in it were alleged that:-

Filed to-day  
Registrar  
01/06/2020

- (a) *That all the Revenue staff were directed to be present on 13.02.2020 in the Tehsil Office along with revenue record for conducting the Tehsil Hazri/Revenue Darbar proceedings to facilitate the general public on the direction of the Provincial Govt; and in line with Land Record Manual, but you failed to do so.*
- (b) *That you have instigated other revenue staff in disobeyed the lawful commands of superiors and have announced boycott of tehsil hazari, polio duties and have refused to shif patwar Khanas within respective halqas as per the directions of Board of Revenue*
- (c) *that you were repeatedly warned by the undersigned and other officers to refrain from such conduct resembling mutiny, but you expressed utter disregard to such directions. Moreover, Commissioner Peshawar also spoke to you and your representative on the same subject on 12.02.2020 and warned you to not become a cause of embarrassment for provincial Government, but you did not listen and yet again disobeyed on 13.02.2020.*
- (d) *that your absence not only caused inconvenience to the general public, but also shown clear violations of the orders of your superior.*
- (e) *That your this act comes under dis-obedience to the general, violation of instructions, misconduct and utter disregard of official decorum.*

Copies of the suspension order and show cause notice are attached as annexure ..... **A and B.**

- 3- That in response to the said show cause notice the appellant submitted his detail reply and denied all the allegations leveled against him. That in support of his stance taken in the reply the appellant also submitted documentary proofs. Copies of the reply and record are attached as annexure ..... **C & D.**
- 4- That astonishingly the respondent No.2 without conducting regular inquiry into the matter issued the impugned order dated 20.02.2020 whereby major penalty of dismissal from service has been imposed



upon the appellant. Copy of the Impugned order is attached as annexure ..... **E.**

5- That appellant feeling aggrieved from the impugned order dated 20.02.2020 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 and forwarding letter is attached as annexure ..... **F.**

6- 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 20.02.2020 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 20.02.2020.

D- That no opportunity of personal hearing/defense has been provided to the appellant before issuance of the impugned order dated 20.02.2020 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 20.02.2020 without fulfilling the codal formalities, hence the impugned order dated 20.02.2020 is not tenable and liable to be set aside.

F- That no regular inquiry has been conducted before issuance of the impugned order dated 20.2.2020 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 20.2.2020 is void ab initio in the eye of law and rules.

I- That on the day when the Revenue Darbar was called by the respondent No.2 the appellant was summoned for Court proceedings by Civil Judge XVII, Peshawar and was therefore, unable to attend the darbar. **Copy of the attendance certificate is already attached as annexure ..... D.**

J- That in the instant case the appellant has been made escape goat and as such the impugned order dated 20.2.2020 issued by the respondent No.2 is against the law and rules.

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**

MOHAMMAD NADEEM

THROUGH:

**NOOR MUHAMMAD KHATTAK**

**MIR ZAMAN SAFI**

**&**

**AFRASIAB KHAN WAZIR  
ADVOCATES**



A-5

**THE DEPUTY COMMISSIONER, PESHAWAR**

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

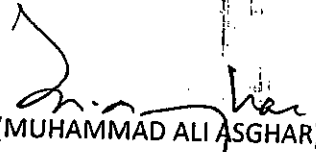
No. 00530 /DC(P)/EA

Dated: 13-February-2020

**ORDER:**

Mr. Nadeem, Patwari Halqa Gulozai Muhammadzai is hereby placed under suspension with immediate effect for non-attending Tehsil Revenue Hazri/Darbar held on 13.02.2020, refusal to perform polio and other duties, and disobedience to lawful command of government as well as non-shifting of Patwar Khana to your respective Halqa.


Show Cause Notice under Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 is served separately.

  
(MUHAMMAD ALI ASGHAR)  
DEPUTY COMMISSIONER

**Endst: No. and Date Even:**

Copy forwarded to the:-

1. Commissioner Peshawar Division Peshawar.
2. Addl. Deputy Commissioner, Peshawar.
3. Accounts Officer of this office for necessary action.
4. District Kanungo, Peshawar.
5. Assistant Commissioner Shah Alam with the direction to hand over the charge of above referred patwar halqa to a suitable patwari of adjacent mauza till further orders.
6. Official concerned for compliance.

  
DEPUTY COMMISSIONER

**ATTESTED**



**SHOW CAUSE NOTICE**

B (6)

I, Muhammad Ali Asghar, Deputy Commissioner Peshawar, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Discipline Rules 2011, do hereby Charge you, **Mr. Nadeem, Patwari Halqa Gulozai Muhammadzai**, as follows:

1. That you were posted as **Patwari Halqa Gulozai Muhammadzai** committed the following irregularities:

- (a) That all the Revenue staff were directed to be present on 13-02-2020 in the Tehsil office along with revenue record for conducting the Tehsil Hazri/Revenue Darbar proceedings to facilitate the general public on the direction of the Provincial Govt. and in line with Land Record Manual, but you failed to do so.
- (b) That you have instigated other revenue staff in disobeying the lawful commands of superiors and have announced boycott of tehsil hazari, polio duties and have refused to shift Patwar khanas within respective halqas as per the directions of Board of Revenue.
- (c) That you were repeatedly warned by the undersigned and other officers to refrain from such conduct resembling mutiny, but you expressed utter disregard to such directions. Moreover Commissioner Peshawar also spoke to you and your representative on the same subject on 12.02.2020 and warned you to not become a cause of embarrassment for Provincial Government, but you did not listen and yet again disobeyed on 13.02.2020.
- (d) That your absence not only caused inconvenience to the general public, but also shown clear violations of the orders of your superior.
- (e) That your this act comes under dis-obedience, violation of instructions, misconduct and utter disregard of official decorum.


2. By reasons of the above, you appear to be guilty of mis-conduct and subversion 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. Since, the undersigned as competent authority, witnessed the whole scenario myself and their remains no doubt about your conduct, or the need of any inquiry or further probe into the matter, therefore the same is dispensed with, as provided under Rule 5 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules 2011.

4. Your written defense, if any, should reach the undersigned, within seven (07) days, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

**ATTESTED**



  
(MUHAMMAD ALI ASGHAR)  
DEPUTY COMMISSIONER  
(Competent Authority)

To

The Deputy Commissioner  
Peshawar.

C-7

Subject: REPLY TO THE SHOW CAUSE NOTICE DATED 13/02/2020

Respected Sir,

It is most respectfully submitted that the undersigned is serving as Patwari Halqa Muhammadzai Peshawar and in whole of my service, I have not committed any misconduct or disobedience of my high ups. I am performing my duties honestly and never ever refused to perform my legal duties during my service career. I respectfully submit my reply to the Show Cause Notice issued by your good office dated 13/02/2020 as under:

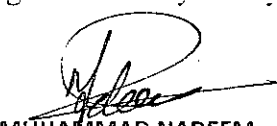
- a. In reply of Para No. a. it is submitted that on 13/02/2020, I was summoned in civil case titled "Mashal.... VS Ijaz...." By the court of learned Civil Judge-XVII. Peshawar and the learned Judge asked me to wait for the counsels of the parties and don't leave the court premises without her order despite the fact that I have requested so many times to allow me as the worthy Deputy Commissioner Peshawar has directed me to attend the Revenue Darbar but the learned judge did not allowed me, hence I waited for the counsels till 02:15 PM. After that, the learned judge directed me to produce the record. I went to my Patwarkhana which is situated 15KM away from Judicial Complex, when I reached back, the Revenue Darbar was winded up. hence for the above reason, I was not in such a position to attend the Darbar. (Copy of the court certificate is attached).
- b. In reply of Para No. b, it is respectfully submitted that I have never ever instigated the other revenue staff as neither I am involved in any kind of Union activities nor I hold any designation in the Union. Moreover, it was not possible for me to instigate Patwaris inside the court room of the learned judge, hence I cannot think about the instigation of other revenue staff. I neither announced boycott from Tehsil Hazri, nor from Polio Campaign but my absence from Revenue Darbar was not intentional. I am performing my polio duty honestly without any fail. In polio campaign which has been started on 17/02/2020, I am participating whole heartedly and made the refusal of polio drops to zero in Halqa Muhammadzai, despite of the fact that I had handed over the charge to Girdawar circle Pakha Ghulam on 14/02/2020 after noon, after issuance of Suspension order. From my performance in the polio campaign, the concerned Doctor had also issued me appreciation letter (Copy of the appreciation letter is attached). I have posted in Halqa Muhammazai on 15/01/2020 and assumed the charge of my Halqa on 21/01/2020 and soon after taking the charge, I shifted my Patwarkhana to Halqa Muhammadzai, and the said matter had also been brought into the notice of Naib Tehsildar Dalazak, Peshawar immediately.
- c. In reply of the Para No.c, it is respectfully submitted that I have neither given notice as mentioned in para by your good office, nor by the worthy Commissioner Peshawar and even I cannot think about disobeying of the order of this august office.
- d. In reply of Para No.d. it is submitted that my absence was not intentional or deliberate, but due to the reason mentioned in Para a. Moreover, I cannot think about the disobeying order of your good self.
- e. In reply of Para No. e it is submitted that I neither committed any misconduct nor disobeying the order of this office.

It is therefore requested that I may kindly be exonerated and the suspension order along with Show Cause Notice dated 13/02/2020 issued against me may kindly be withdrawn.

**ATTESTED**

Dated 18/02/2020

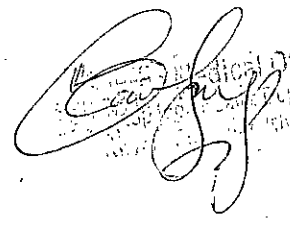


  
MUHAMMAD NADEEM  
PATWARI HALQA MUHAMMADZAI  
PESHAWAR

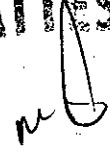
⑧ - 7

میں ڈاکٹر یارون میڈیکل آفسیڈر B-14-11 وڈیڈ اقدار سہ ماہیوں کے قند نامہ پوری  
طرحہ قند زائی نے مورخہ 29 جنوری تا 4 فروری 2020 کو لوگو کمپین میں  
تعمیر پور ساٹھ دیا اور ان قاری بچوں کو یوٹیو کے قطرے بلائے اور میں نے یوٹیو مینٹ  
جو کہ 5 اشروں کے لئے BH وڈیڈ میں منقود ہوئی تھی میں قند نامہ پوری  
کئی فریڈ کو سب سے لیا۔

ڈاکٹر محمد معاون

  
Medical Officer  
Department  
District

ATTESTED



Dated: 13/02/2020

9

ATTENDANCE CERTIFICATE

It is Certified that today Mr. Muhammad Nadeem Patwari Halqa, Mouza Gulozi Muhammad zai attended this court in Case titled "Mashaal vs Ejaz". He noted the record today. PP is given to him for the next date fixed. i.e. 16/03/2020

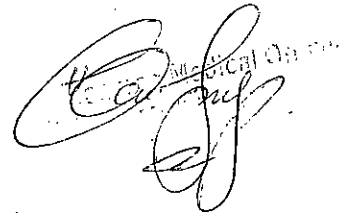
*Nosheen*  
NOSHEEN NISAR  
CJ-XVII, Peshawar

ATTESTED


*nd*

آج مورخہ 27 اکتوبر 2020ء کو محمد ندیم شکاری حلقہ محمد زائی نے حلقہ میں کیے جانے والے  
والدین بچوں کو لوہو کے قسطے بلائے سے انکاری جمع محمد ندیم شکاری حلقہ  
محمد زائی نے انکاری بچوں کے والدین کو رضامند کر کے انکے بچوں کو لوہو کے قسطے  
بلائے گئے۔ اور تمام انکاری بچوں کو لوہو کے قسطے بلا کر حلقہ محمد زائی میں انکاری  
صفر آ رہے ہیں جو قابل شناسی اور قابل داد ہے۔

ڈاکٹر محمد عمارون



ATTESTED







E - (11)

**THE DEPUTY COMMISSIONER, PESHAWAR**

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

No. 753 /DK

Dated: 20-February-2020

**ORDER:**

WHEREAS, Mr. Nadeem, Patwari Halqa Gulozai was placed under suspension vide order No.00530/DC(P)/EA dated 13-02-2020 and served upon a Show Cause Notice vide No.659/DK dated 13-02-2020 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, 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 accused official is blatantly challenging the law and causing obstruction in the executive functioning of the government and they have repeatedly resorted to strikes and agitation thrice before in last 06 months

AND WHEREAS, the accused official submitted his reply to the Show Cause Notice on 18-02-2020 refusing the allegations leveled against him.


AND WHEREAS, the accused was summoned for personal hearing on 20-02-2020, and was heard in person, wherein it came to the notice that the accused official had no valid justification to offer in his defence other than citing unfounded and frivolous excuses.

AND WHEREAS, keeping in view no need for any enquiry or further probe into the matter and therefore need of the inquiry was dispense with as provided in rules 5 under Govt of Khyber Pakhtunkhwa servants (efficiency & discipline) Rule 2011 being involved in subversive activities, bring loss to the public exchequer causing embarrassment for the govt. and have raised the banner of mutiny.

**ATTESTED**


12

NOW THEREFORE, 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. Nadeem, Patwari with immediate effect.

  
(MUHAMMAD ALI ASGHAR)  
DEPUTY COMMISSIONER

Endst: No. and Date Even:

- (i) Commissioner, Peshawar Division, Peshawar.
- (ii) Accountant General, Khyber Pakhtunkhwa, Peshawar.
- (iii) Addl. Deputy Commissioner, Peshawar.
- (iv) Addl. Assistant Commissioner (Rev) Peshawar.
- (v) Accounts Officer of DC office for necessary action.
- (vi) Mr. Nadeem, Ex-Patwari Peshawar.

  
DEPUTY COMMISSIONER

F-13

**BEFORE THE WORTHY COMMISSIONER PESHAWAR DIVISION  
PESHAWAR**

**Mohammad Nadeem**  
Patwari Halqa Mohammadzai  
Peshawar.

**(Appellant)**

Vs

**Deputy Commissioner**  
Deputy Commissioner Office  
Peshawar.

**(Respondent)**

---

Appeal against Order No.753/DK (the  
"Dismissal Order") Dated 20/02/2020 passed by  
the Respondent

---

**ATTESTED**

*m*

14

**Most Respectfully Submitted,**

1. Prior to the passing of the Dismissal Order, the Appellant was working as *Patwari* in the basic pay scale (“BPS”)-9 at Peshawar. The Appellant has maintained an impeccable record of service since his appointment.
2. The Respondent is presently serving as Deputy Commissioner of Peshawar.
3. The Appellant is aggrieved of the Dismissal Order wherein a major penalty has been imposed by the Respondent against the Appellant and he has been dismissed from service with immediate effect.

**Annexure-1: Copy of the Order**

4. Brief facts leading to this Appeal are that the Respondent issued Show-Cause Notice (the “Notice”) No. 659/DK dated 13/02/2020 wherein he directed the Appellant to submit a reply to the Notice within (7) days from the date of issuance of the Notice and charged the Appellant therein with the following:-
  - a. “That all the revenue staff was directed to be present on 13-02-2020 in the Tehsil office along with revenue record for conducting the Tehsil *Hazari* Revenue *Darbar* proceedings to facilitate the general public on the direction of the provincial government and in line with the Land Record Manual, but you failed to do so.”
  - b. “That you have instigated other revenue staff and disobeying the lawful commands of superiors and have announced boycott of Tehsil *hazri*, polio duties and have refused to shift *patwar khanas* within respective *halqas* as per the direction of the Board of Revenue.”

**ATTESTED**

*[Handwritten Signature]*

- c. That you were repeatedly warned by the undersigned and other officers to refrain from such conduct resembling mutiny but you expressed utter disregard to such directions. Moreover, Commissioner Peshawar also spoke to you and your representative on the same subject on 12-02-2020 and warned you to not become a cause of embarrassment for the Provincial Government, but you did not listen and yet again disobeyed on 13-02-2020.”
- d. “That your absence not only caused inconvenience to the general public, but also shown clear violation of the order of your superiors.”
- e. “That your this act comes under disobedience, violation of instructions, misconduct, and utter disregard of official decorum.”

**Annexure-2: Copy of the Notice**

- 5. In addition to the Notice, the Respondent also issued Suspension Order (the “Suspension Order”) No. 00530/DC(P)/EA dated 13/02/2020 suspending the Appellant from service indefinitely.

**Annexure-3: Copy of the Suspension Order**

- 6. Upon receiving the Notice and the Suspension Order, the Appellant submitted his reply (the “Reply”) dated 18/02/2020. In his defence, the Appellant underscored all the pertinent facts and laws applicable to his case and delineated detailed reasons for why the Appellant could not be legally implicated on the foundation of the alleged facts in the Notice.

**Annexure-4: Copy of the Reply**

- 7. Categorically disregarding the defence and arguments of the Appellant *vide* the Reply and the pertinent law, the Respondent proceeded to implicate the Appellant *vide* the comments in the Dismissal Order.

**ATTESTED**



8. At the very onset, the actions of Respondent – the Notice, the Suspension Order, and the Dismissal Order – are *ex facie* illegal, non-speaking, *ultra vires*, extrajudicial, and unconstitutional for unlawful exercise of authority, disregard of pertinent facts, and misinterpretation of statutory provisions.
  
9. Firstly, the procedure adopted by the Respondent is contrary to the scheme of law and the Fundamental Rights guaranteed to the Appellant under the Constitution of Pakistan 1973 (the “Constitution”). It is established law that no-one is a judge in his own cause i.e. *nemo iudex in causa sua*. However, despite claiming in Paragraph-4 of the Notice to allegedly having personally witnessed misconduct and irregularity on part of the Appellant, the Respondent continued to act as a judge in his own cause and issued the Notice, the Suspension Order, and the Dismissal Order in violation of the Article 10-A of the Constitution. Such a statement renders casts serious doubts over the fairness and impartiality of the proceedings undertaken by the Respondent. Moreover, this statement also renders an inquiry under Rule-5 mandatory to ensure independence and impartiality in the proceedings against the Appellant.
  
10. Secondly, it is settled law that issuing a show-cause notice is serious business and not casual correspondence. A show-cause notice must clearly specify in detail the facts of which the subject is accused and inform him of the precise charges leveled against him. In juxtaposition, in the instant case, not only has the Respondent brought categorically vague charges against the Appellant, he has also failed to allude to a single fact which can establish an offence, misconduct, or irregularity committed by the Appellant under the law.
  
11. Thirdly, the law does not permit determination of issues which have not been incorporated in a show-cause notice. However, perusal of the Dismissal Order conspicuously reveals that the issues rendered as grounds of dismissal in the Dismissal Order stand in stark contrast with the charges leveled against the Appellant in the Notice. The Appellant cannot be made to answer for a case of which he was not

**ATTESTED**  


informed via a show-cause notice.

12. Fourthly, the Respondent has failed to appreciate the evidence brought by the Appellant. Vis-à-vis the charge in Paragraph (a) of the Notice pertaining to the Appellant's non-attendance in Tehsil *Hazari*/ Revenue *Darbar* (the "Darbar"), the Appellant submitted in his Reply that he was summoned for court proceedings by Civil Judge-XVII, Peshawar and was therefore unable to attend the *Darbar* due to being occupied in court proceedings. In this regard, the Appellant produced an Attendance Certificate (the "Certificate") for the said date duly signed by the said Judge.
  
13. In Paragraph (b) of the Notice, the Respondent alleged that the Respondent disobeyed the command of his seniors, announced boycott of the *Hazari*, polio duties, and also refused to shift *patwar khanas* within the respective *halqas* as per the directions of the Board of Revenue. It must be observed that the Appellant has not specified which command was refused by the Appellant and who was the command given by. Furthermore, the Respondent has not produced any evidence to establish his allegation that an announcement for boycott from the *Hazari* was made and that it was the Appellant who made the announcement. Anent the allegation of abdication from polio duties leveled by the Respondent against the Appellant, the Appellant produced a duly signed statement (the "First Statement") of Dr. Mohammad Haroon dated 10/02/2020 another statement (the "Second Statement") dated 17/02/2020 testifying therein to the Appellant's discharge of his polio duties with due diligence and enthusiasm in his Reply. Vis-à-vis the allegation of refusing to take charge, the Appellant took charge of the *halqa* he was entrusted with *vides* the relevant charge report (the "Charge Report") dated 20/01/2020.

**ATTESTED**  


- Annexure-5: Copy of the First Statement
- Annexure-6: Copy of the Second Statement
- Annexure-7: Copy of the Charge Report

- 14. In Paragraph (c) of the Notice, the Respondent has alleged that the Appellant was warned of refraining from conduct “resembling mutiny” and that Commissioner of Peshawar Division spoke with the Appellant and gave him similar directions on the said matter on 12/02/2020. He further alleged that the Appellant flouted the directions of the Respondent and Commissioner Peshawar on 13/02/2020. However, the Respondent has failed to produce an iota of evidence to substantiate a single element of this allegation.
- 15. Disregarding the Reply and evidence produced by the Appellant, the Respondent proceeded to implicate the Appellant on frivolous allegations and impose a major penalty of dismissal from service *vide* the Dismissal Order.
- 16. In the light of the foregoing, it is manifest that the order of the Respondent has not committed any offence, misconduct, or irregularity under the law. The Notice, the Suspension Order, and the Dismissal Order are illegal and have been passed in violation of established judicial standards of fair trial and due process. Hence the jurisdiction of the Worthy Forum is invoked through the present Appeal for setting-aside of the Dismissal Order.
- 17. The Appellant reserves the right, with due permission of the Worthy Commissioner, to present further grounds and arguments verbally, or in writing, and to present further evidence to prove his case.

**Prayer:** In view of the submissions above, it is therefore most humbly prayed that:-

**ATTESTED**  


- (A) The Dismissal Order dated 20/02/2020 passed by the Respondent may kindly be set aside;
- (B) The Appellant may kindly be reinstated to his official position from 20/02/2020 along with back



19

benefits; and

(C) Any other relief to the Appellant which may be deemed just and appropriate in the circumstances of the case may kindly be granted.



Yours Obediently,  
Mohammad Nadeem.

Ex Patwari

Date: 20/02/2020

**ATTESTED**



20



OFFICE OF THE  
COMMISSIONER PESHAWAR DIVISION  
PESHAWAR

No. Reader CPD/2020  
Date: 04.03.2020

2945

To

The Deputy Commissioner  
Peshawar.

Subject:

**DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER  
DATED 20.02.2020.**

I am directed to enclose herewith a copy of departmental appeal filed by the appellant (**Muhammad Nadeem Ex-Patwari**) against the order bearing no. 753/DK dated 20.02.2020 of the Deputy Commissioner Peshawar whereby the appellant was dismissed from service under Rule 4(1)(b)(iv) of the Khyber Pakhtunkhwa Servants (Efficiency & Disciplinary) Rules-2011.

It is requested that para-wise comments in the matter may be furnished please.

**Assistant to Commissioner (Rev/GA)**  
Peshawar Division Peshawar.

**No. Reader CPD/2020**

2946

Copy forwarded to PS to Commissioner Peshawar.

**Assistant to Commissioner (Rev/GA)**  
Peshawar Division Peshawar.

mf

**VAKALATNAMA**

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

\_\_\_\_\_ OF 2020

Mohammad Nadeem

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Revenue Deptt.

(RESPONDENT)  
(DEFENDANT)

I/We Mohammad Nadeem

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

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

**SHAHZULLAH YOUSAFZAI**

**MIR ZAMAN SAFI**

**&**

**AFRSIYAB KHAN WAZIR**  
**ADVOCATES**

OFFICE:

Flat No.4, 2<sup>nd</sup> Floor, Juma Khan  
Plaza, near FATA Secretariat,  
Warsak Road, Peshawar.  
Mobile No.0345-9383141

**IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.**

**Appeal No.4931/2020**

Mr. Muhammad Nadeem, 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.**

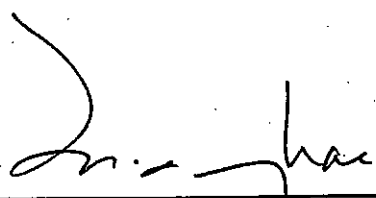
1. Correct to the extent that he performed duty as Office Patwari in District Peshawar.
2. Correct.
3. Correct to the extent that reply to the Show Cause notice was submitted.
4. Correct to the extent that the order of dismissal was issued. The said order was issued under E&D Rules.
5. Incorrect. The matter was under consideration, but due to Corona pandemic the offices were closed by the Provincial Govt. hence no action could be taken.
6. Incorrect. The appellant has no justification to file the instant appeal.

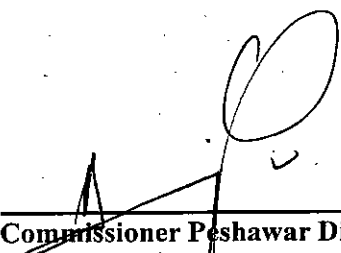
**GROUNDS**

- 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 20-02-2020.
- 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, hence direct Show Cause Notice was served, which was duly replied by the appellant.

- D. Incorrect. Proper Show Cause Notice was issued to the appellant vide No.659/DK dated 13-02-2020, which was replied. After which personal hearing was made on 20-02-2020 but the appellant could not put any valid justification in his defense.
- E. Incorrect. All the required rules/regulations were followed and formalities were fulfilled after which the dismissal order dated 20-02-2020 was issued.
- F. Incorrect. The inquiry was dispensed with as per rule 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. The appellant should have intimated his highups about the appearance before any court, but he is placing lame excuses just to cover the facts
- J. Incorrect. The appellant is making false excuses and have nothing in defense. His unlawful act have badly affected the performance of other officials which resulted in violations of directions/instructions of high-ups and creating hurdles for general public.
- 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.4931/2020**

Mr. Muhammad Nadeem, Ex-Patwari, Peshawar

.....(Appellant)

VERSUS

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

.....(Respondents)

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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.
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**OBJECTION ON FACTS.**

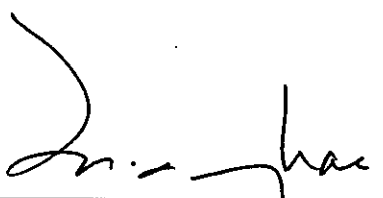
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Deputy Commissioner/Collector  
Peshawar  
(Respondent No.2)

  
Commissioner Peshawar Division,  
Peshawar  
(Respondent No.1)