

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

11/6/20


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.- 4940 /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-		

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.

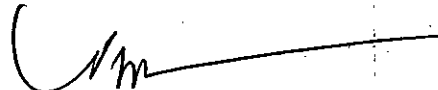

(Atiq-ur-Rehman Wazir)
Member


Chairman

11.11.2020

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

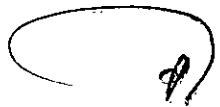
04.12.2020

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)

18.12.2020

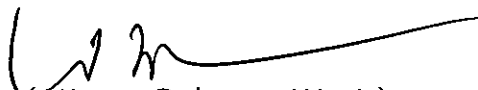
Appellant with counsel present.


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)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 4940 /2020

ZARSHAD KHAN

VS

REVENUE DEPTT:

INDEX

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3	Order dated 28.11.2019	B	6.
4	Impugned order	C	7- 8.
5	Departmental appeal	D	9- 13.
6	Vakalat nama	14.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO 4940 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4202

Dated 2-6-2020

Mr. Zarshad Khan, Ex-Patwari,

Halqa mammo khatkai , 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 in the year 2010 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 in the patwar halqa concerned the appellant was served with a show cause notice wherein it were alleged that:-

Filed to-day
2/6/2020
Registrar

- (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. That in support of his stance taken in the reply the appellant also submitted documentary proofs.
- 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 **B.**
- 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 **C.**
- 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 **D.**

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

ZARSHAD KHAN

THROUGH:

NOOR MUHAMMAD KHATTAK

MIR ZAMAN SAFI

&

**AFRASIAB KHAN WAZIR
ADVOCATES**

SHOW CAUSE NOTS

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:

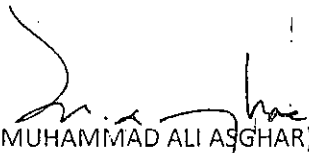
1. I am satisfied that you have committed the following acts /omissions specified/falls under the purview of Section 3 of the said Ordinance:

- (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 ex parte action shall be taken against you.


(MUHAMMAD ALI ASGHAR)
DEPUTY COMMISSIONER
(Competent Authority)

ATTESTED




THE DEPUTY COMMISSIONER, PESHAWAR

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

No. 3656 /DK

Dated:28-November-2019

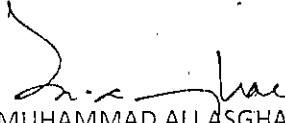
To

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


زرشاد خان



(1) (2)

THE DEPUTY COMMISSIONER, PESHAWAR

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

No.657/DK

Dated:13-February-2020

ORDER:

WHEREAS, Mr. Zarshad Khan S/o Ali Akbar 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.


Secy:	
Ad:	
Asst:	
S:	
B:	
Diary No.	1841
Date:	24-2-2020

Zarshad Khan
Ad
 28/2/20
 ATTESTED
AD

(8)

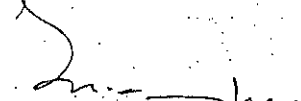
AND WHEREAS, keeping in view no need for any enquiry or further probe into the matter and therefore need of the inquiry is dispense with a provided rules 5 under Gov.t of Khyber Pakhtunkhwa servants (efficiency & discipline) Rule 2011. Furthermore the accused is involved in subversive activities bring loss to the public exchequer 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, Muhammad Ali Asghar, Deputy Commissioner Peshawar is competent authority, hereby impose a major penalty of *Dismissal from service* upon Mr. Zarshad Khan S/o Ali Akbar, 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 report immediately.
- (iv) Accounts Officer of DC office for necessary action.
- (v) Mr. Zarshad Khan S/o Ali Akbar, Ex-Patwari.


DEPUTY COMMISSIONER

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 2010 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 issued a show cause notice containing some baseless concocted and frivolous allegations, being based on mala fide, the appellant challenged the show cause notice in writ petition No 5804/2019 and further the same was replied by the appellant, denying all the allegations, However 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 A & B)
3. That the appellant was surprised to receive the dismissal/impugned order dated 13/02/2020 on the basis of some baseless allegations, on the same Showcause notice again, even some of these allegations were not mentioned in the Show cause Notice. It is worth mentioned that prior to the impugned order Dated 13-02-2020, no charge sheet along with statement of allegation or showcause notice, was issued or any fact finding or regular inquiry was conducted against the appellant. (copy of the impugned order Dated 13/02/2020 is annexure 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:

- A. That the impugned order is against the law, Facts, Constitution, Principles of Natural justice, based on mala fide, void ab initio hence not sustainable in the eyes of Law.

ATTESTED

mo

- (10)
- B. That no charge sheet, statement of allegation issued against 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 inquiry Officer or 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 the 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 iota of evidence or witness against the appellant.
 - II. Instigating patwaries for refusing from court of law..... this allegation is totally denied I never instigate any one for refusing from attending law court .there is no single witness against the appellant to substantiate this allegation
 - III. (LOSS TO GOVERNMENT EXCHEQUER). This allegation is denied as I never performed the above acts or any acts which could cause loss to public exchequer.

ATTESTED

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 appellant took part in any such assembly nor did refuse to perform any duty assigned to the appellant 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 appellant took part in any such assembly nor did refuse to perform any duty assigned to the appellant by superior. there is no any record a proof of the worthy commissioner's warning or directions hence the same is denied.

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

This allegation is denied as the appellant was posted in patwar halqa mamo khaktkay and was unaware of any such darbar as the appellant was not summoned or informed through any parwana etc. so the absence from Darbar was not wilful but for the reasons mentioned above.

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

This is a very strange allegation the appellant 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. Further when the appellant was dismissed on 13/02/2020 then how could it be possible to perform polio duty on 17/02/2020

- 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 allegations involve factual controversy hence regular inquiry was required

ATTESTED



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 dispensations 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 courts 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

Zarshad
Ex. Patwari.

ATTESTED




(13)

**OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

No. Reader CPD/2020
Date: 04.03.2020

To

The Deputy Commissioner
Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER
DATED 13.02.2020.**

I am directed to enclose herewith a copy of departmental appeal filed by the appellant (Mr. Zarshad ex-Patwari) against the order bearing no. 657/DK dated 13.02.2020 of the Deputy Commissioner Peshawar whereby the appellant was dismissed from service under Rule4(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

Copy forwarded to PS to Commissioner Peshawar.


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

ATTESTED


VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Zarshad Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Revenue Deptt:

(RESPONDENT)
(DEFENDANT)

I/We Zarshad Khan

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
&


AFRSIYAH 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.4940/2020

Mr. Zarshad Khan, 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.

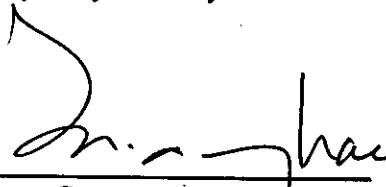
OBJECTION ON FACTS.

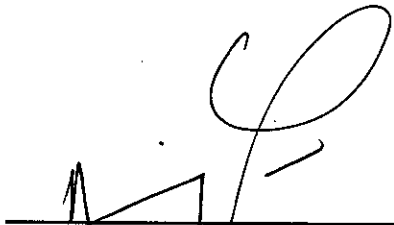
1. Correct to the extent that he performed duty as Office Patwari in District Peshawar.
2. Correct.
3. Correct to the extent that reply to the Show Cause notice was submitted.
4. Incorrect. A warning was issued to him alongwith others directing to avoid any agitation, strike or disruption of official 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. and 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 command. 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.

GROUND

- 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.4940/2020

Mr. Zarshad Khan, Ex-Patwari, Peshawar

.....(Appellant)

VERSUS

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

.....(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 & 2

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