BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 178/2019

Date of Institution ...

06.02.2019

Date of Decision

11.01.2022

Nizakat Shah S/O Muhammad Shah R/O Urmar Payan Peshawar.

(Appellant)

VERSUS

Director Elementary and Secondary Education Khyber Pakhtunkhwa at Directorate of Elementary and Secondary Education Civil Secretariat Peshawar and one another. (Respondents)

Javed Iqbal Gulbela

Advocate

For Appellant

Kabirullah Khattak,

Additional Advocate General

For respondents

AHMAD SULTAN TAREEN ATIQ-UR-REHMAN WAZIR

TR

CHAIRMAN

MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant was appointed as Chowkidar in Education Department vide order dated 07-11-1988. During the course of his service, the appellant was charged in FIR U/Ss 302/148/149 PPC Dated 02-02-2006, thus he absconded and was unable to perform his duty. The appellant was proceeded against departmentally and was ultimately dismissed from service vide order dated 09-09-2011. The appellant was exonerated of the charges vide judgment dated 11-01-2018. After earning acquittal, the appellant filed an application for his reinstatement, which was rejected vide order dated 31-10-2018. The appellant filed another appeal, which was also rejected vide order dated 31-10-2019, hence the

instant service appeal with prayers that the impugned orders dated 31-10-2018, 30-01-2019 and 09-09-2011 may be set aside and the appellant may be reinstated in service with all back benefits.

- O2. Learned counsel for the appellant has contended that the impugned orders are illegal, unlawful, void and ineffective upon the rights of the appellant and are liable to be set aside; that the appellant was honorably acquitted of the criminal charges and as per law, the appellant is entitled to be re-instated in service with all back benefits, as the appellant was dismissed from service on the charges of his involvement in criminal case; that similarly placed employee have been re-instated in service by the respondents, but the appellant was discriminated and was not re-instated; that the appellant was dismissed from service without adhering to method prescribed in law; that the appellant has not been treated in accordance with law, as no charge sheet/statement of allegation, nor any show cause notice was served upon the appellant, hence the appellant was condemned unheard; that no regular inquiry was conducted against the appellant nor any chance of personal hearing was afforded to the appellant before imposition of major penalty of dismissal from service.
- O3. Learned Additional Advocate General for the respondents has contended that the appellant was charged in an FIR, due to which the appellant went in hiding and willfully absented from his lawful duty; that the appellant did not report the matter to the competent authority and without permission absented himself from duty; that the appellant was proceeded against on the same charges by issuing show cause notice at his home address, but the appellant did not respond, hence such notice was also published in two leading dailies, still the appellant did not turn up, hence he was proceeded ex-parte and was awarded with major punishment of dismissal from service; that upon submission of departmental appeal, proper inquiry to this effect was conducted and upon recommendation of the inquiry officer, his appeal was rejected.

- 04. We have heard learned counsel for the parties and have perused the record.
- 05. Record reveals the appellant was appointed as Chowkidar vide order dated 07-11-1988. During the course of his career, the appellant was charged in FIR, due to which the appellant went in hiding and remained fugitive from law until 2017, when he was arrested by police and was subjected to criminal proceedings. Though the appellant was acquitted of the criminal charges vide judgment dated 11-01-2018, but his long disappearance from law was not warranted. On the other hand, the respondents were required to suspend the appellant from service as per CSR-194, and to wait until completion of the criminal proceedings, but the respondents proceeded the appellant without observing the required legal procedure and the appellant was dismissed from service vide order dated 09-09-2011 without affording him opportunity of defense. It is a well settled legal proposition that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. As is evident from their comments, the respondents were well aware that FIR was lodged against the appellant and that his absence was not willful, still they proceeded the appellant on the charges of absence from duty.
- Of. The appellant filed departmental appeal after earning acquittal from the criminal case. The Supreme Court of Pakistan it its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case,

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which had formed the foundation for his removal from service. In 2012 PLC (CS)

502, it has been held that if a person is acquitted of a charge, the presumption

would be that he was innocent. Moreover, after acquittal of the appellant in the

criminal case, there was no material available with the authorities to take action

and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR

57, 1993 PLC (CS) 460.

07. We are of the considered opinion that the appellant was required to

surrendered before law after registration of FIR against him, but he remained

fugitive from law for quite longer time, who later on was arrested by police and as

a result of criminal proceedings, the appellant was acquitted of the criminal

charges. In a situation, we are inclined to partially accept the instant appeal by

converting the major penalty of dismissal form service into major punishment of

compulsory retirement keeping in view his long service and his acquittal from

criminal charges. Parties are left to bear their own costs. File be consigned to

record room.

ANNOUNCED 11.01.2022

(AHMAD SULTAN TAREEN)

CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)

MEMBER (E)

ORDER 11.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Kahttak, learned Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, we are inclined to partially accept the instant appeal by converting the major penalty of dismissal form service into major punishment of compulsory retirement keeping in view his long service and his acquittal from criminal charges. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 11.01.2022

> (AHMAD SULTAN TAREEN) CHAIRMAN

(ATIQ-UR-REHMAN WAZIR) MEMBER (E) Nizakat-Shah.

Nizakat-Shah.

Dismissing 9/9/21/

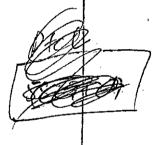
Proportion 9/9/21/

Acquited 11/1/2018

Acquited 11/1/2018

Pepided 31/10/2018

S. A 4/2/2019.



Appellant in person and Addl. AG for the respondents present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, the matter is adjourned to 3.06.2021 for hearing before the D.B.

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

Chairman

03.06.2021

Mr. Tahir Khan, junior of learned counsel for the appellant present. Mr. Touseef-ur-Rehman, ADO alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Former sought adjournment on the ground that learned counsel for the appellant is busy before the august Peshawar High Court. Adjourned. To come up for arguments before the D.B on 08.09.2021.

(ATIQ-UR-REHMAN WAZIR) MEMBER (EXECUTIVE) (SALAH-UD-DIN) MEMBER (JUDICIAL)

08.09.2021 Counsel for appellant present.

Javid Ullah learned Assistant Advocate General for respondents present.

Former made a request for adjournment; Request is acceded. To come up for arguments on 11.01.2021, before D.B

(Rozina Rehman) Member (J)

Chairman

.2020

Due to COVID19, the case is adjourned to

(0)/2/2020 for the same as before.

Reader

10.08.2020

Due to summer vacations case to come up for the same on 12.10.2020 before D.B.

Reader

12.10.2020

Junior counsel present on behalf of appellant.

Mr. Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Former made a request for adjournment as senior counsel is not available. Adjourned. To come up for arguments on 04.12.2020 before D.B.

(Mian Muhammad).
Member (E)

(Rozina Rehman) Member (J)

04.12.2020

Due to COVID-19 the case is adjourned for the same on **2.03.2021** before D.B.



16.03.2020

Clerk to counsel for the appellant present. Addl: AG for respondents present. Due to general strike on the call of Peshawar Bar Council, the instant case is adjourned. To come up for arguments on 18.05.2020 before D.B.

(MAIN MUHAMMAD) MEMBER

(M.AMIN KHAN KUNDI) MEMBER 30.10.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 03.12.2019 for arguments before D.B.

> (Ahmad Hassan) Member

(M. Amin Khan Kundi) Member

03.12.2019

Junior to counsel for the appellant and District Attorney for the respondents present.

Request for adjournment is made due to nonavailability of learned senior counsel for the appellant due to engagement before the Honourable High Court today.

Adjourned to 24.01.2020 before the D.B.

Chairman

24.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak learned Additional Advocate General for respondents present. Adjourned 16.03.2020 for to arguments/further proceedings before D.B.

(M. Amin Khan Kundi)

Member

(Hussain Shah)

Member

20.06.2019

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned to 02.08.2019 for written reply/comments before S.B.

(Muhammad Amin Khan Kundi) Member

02.08.2019

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Arshad Ali, Supdt for respondents present. Written reply/comments on behalf of the respondents no.1 and 2 submitted, which is placed on file. The appellant may file rejoinder to the comments submitted by the respondents, if so, advised.

Adjourned to 17,09.2019 for arguments before D.B.

(Ahmad Hassan) Member

17.09.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned DDA present. Junior to counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 30.10.2019 before D.B.

Member

Member



Counsel for the appellant Muhammad Nizakat Shah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Education Department as Chowkidar. He was dismissed from service vide order dated 09.09.2011 on the allegation of absence due to involvement in criminal case. The appellant was acquitted by the competent court vide order dated 11.01.2018. The appellant filed departmental appeal on 14.09.2018 which was rejected on 31.10.2018. The appellant further filed an application for reinstatement but the same was also rejected on 31.01.2019 hence, the present service appeal. It was further contended that the appellant was involved in criminal case and was in custody of the Police therefore, the appellant could not attend the duty. It was further contended that neither proper inquiry was conducted nor any absence notice was sent at the home address of the appellant therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 29.04.2019 before S.B.

Appellant Deposited Security & Process Fee

(Muhammad Amin Khan Kundi) Member

MA

29.04.2019

Clerk of counsel for the appellant present. Adll: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up written reply/comments on 20.06.2019 before S.B.

(Ahmad Hassan) Member

Form- A

FORM OF ORDER SHEET

Court of	·
Case No	178 /2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/2/2019******	The appeal of Mr. Nizakat Shah presented today by Mr. Saghir Iqbal Gulbella Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
		REGISTRAR 61>11
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on $19-3-19$.
		CHAIRMAN
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BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Nizakat Shah

VERSUS

Director Elementary and Secondary Education Khyber Pakhtunkhwa and others INDEX

S#	Description of Documents	Annex	Pages
1.	Grounds of Appeal.		1-6
2.	Affidavit.		7
3.	Application for condonation of delay		8-9
4.	Addresses of parties		10
5.	Copy of the apartment order	"A"	-11
6.	Copy of the service book	"B"	12-23
7.	Copy of the FIR	"C"	24
8.	Copy of the dismissal office order	"D"	25
9.	Copy of the judgment dated 11/01/2018	"E"	26-39
10.	Copy of the departmental appeal and impugned order dated 31/10/2018	"F & G"	40-41
11.	Copy of departmental appeal and order dated 30/01/2019	"H" & "I"	42-44
12.	Wakalat Nama	·	45
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Appellant

Through

Dated: 04/02/2019

Saghir Iqbal Gulbela

Javed Iqbal Gulbela,

Israr Ahmad

Advocates, High Court

Peshawar.

Off Add: 9-10A Al-Nimrah Centre, Govt College Chowk Peshawar



BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Khyber Pakhtukhwa Service Tribunal

In Re S.A ______/2019

Diary No. 15 8

Dated 06-2-2019

Nizakat Shah S/O Muhammad Shah R/O Urmar Payan Peshawar.

-----(Appellant)

VERSUS

- 1. Director Elementary and Secondary Education Khyber Pakhtunkhwa at Directorate of Elementary and Secondary Education Civil Secretariat Peshawar.
- 2. The then Executive District Officer (E & SE) Education Peshawar Now District Education Officer (Male) Peshawar.

-----(Respondent).

Filedto-day

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT -1974 AGAINST THE IMPUGNED OFFICE ORDER NO. 8340/F.NO.A-20/C-IV/P-F DATED 30/01/2019 OF THE DIRECTOR E & SE KHYBER PAKHTUNKHWA, OFFICE ORDER NO.10653-55/F.NO.A-20/C-IV/PF OF 31/10/2018 DIRECTOR ELEMENTARY **EDUCATION** SECONDARY KHYBER PESHAWAR PAKHTUNKHWA WHEREBY **APPEALS** DEPARTMENTAL AGAINST IMPUGNED OFFICE ORDER NO. 5932-36, DATED OF 09/09/2011 THE EXECUTIVE PESHAWAR, THE APPELLANT WAS DISMISSED SERVICE. WAS TURNED DOWN CLASSICAL CURSORY AND WHIMSICAL MANNER

Respectfully Sheweth;

1. That after going through the mandatorily required procedure the appellant was inducted into service as Chowkidar the education department on 07/11/1988. (Copy of the apartment order is annexed as annexure "A")

- 2. That the appellant since induction into service has always been remained as regular obedient, hardworking and sincere fellow and has never caused any displeasure of any of his superiors and there has never ever been any complaint move against the appellant. (Copy of the service book is annexed as annexure "B")
- 3. That unfortunately the appellant was nominated and implicated in a criminal case registered vide FIR No. 32 dated 02/02/2006 U/S 302/148/149 PPC, police station Urmar Peshawar which caused the appellant to abscond to save his life and thus was naturally unable to perform his duties. (Copy of the FIR is annexed herewith as annexure "C")
- 4. That in the meanwhile the appellant was dismissed from service vide the impugned office order No. 5932-36 dated 09/09/2011 by the Executive District Officer (E & SE) Education Peshawar without any show cause, charge sheet, statement of allegation, final

show cause notice and even without any inquiry. (Copy of the dismissal office order is annexed as annexure "D")

- 5. That as the appellant was innocent and had falsely been implicated in the instant case, so was rightly acquitted in the criminal case vide the judgment and order dated 11/01/2018 of the learned Additional Session Judge-VIII, Peshawar. (Copy of the judgment dated 11/01/2018 is annexed as annexure "E")
- 6. That after been Honorably acquitted the appellant moved an appeal to the Director (E & SE) Education Khyber Pakhtunkhwa Peshawar which was turned down on 31/10/2018. (Copy of the departmental appeal and impugned order dated 31/10/2018 are annexed as annexure "F" & "G" respectively)
- 7. That thereafter the appellant moved another appeal to the worthy director but this time fate of the appellant $ext{the}$ deuce again prevailed and again the appeal was dismissed order date 30/10/2019. vide the impugned & "T" (are annexed $^{"}H$ **as** annexure respectively)
- 8. That feeling aggrieved and having no other remedy elsewhere the appellant approaches this Hon'ble Tribunal for his reinstatement

(h)

into service with all back benefits upon the following grounds inter alia:-

Grounds:

- A. That both the impugned orders dated 30/01/2019 and 31/10/2018 whereby the departmental appeals against the impugned order dated 09/09/2011 was dismissed which is illegal, unlawful, void and ineffective upon the rights of the appellant and are required to be set aside.
- **B.** That under the law where civil servant is implicated and nominated in a criminal case and thereafter the same civil servant is entitled to be re instated and the service with ad back benefits, if he had been dismissed from the service, inpersuance to criminal case.
- C. That same is the case of the appellant and the appellant shall have been reinstated to the service, even by operation of law, after being Honorably acquitted by competent Court of law and his appeals should have been accepted, but the same were dismissed which is illegal, wrong, void and the same are required to be set aside.

- D. That where so many other Civil servant who had been implicated in criminal cases reinstated in the same Respondent department, while the same time the appellant was discriminated and his genuine request for reinstated even turn down.
- E. That even no show cause notice, statement of allegation, charge sheet, final show cause notice and above all, even no inquiry was conducted or intimidated to the appellant even and thus the appellant has been condemned unheard.
- F. That even no opportunity of personal hearing was ever afforded to the appellant, prior to imposing the major penalty of dismissal from service and thereafter at appellate stage, by the appellate authority.
- G.That from all prospective both the impugned orders dated 30/01/2019 and 31/01/2018 are wrong, illegal, void and are liable to be set aside alongwith dismissal order dated 09/09/2011 and the appellant is entitled to be reinstated with all back benefits.
- H.That any other ground not raised here may graciously be allowed at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant appeal, the impugned order No. 10653-55/F.No.A-20/C-IV/PF, dated 31/10/2018 and order 8340/F.No.A-20/C-W/P-F 30/01/2019 of (Director Elementary and Secondary Education) Pakhtunkhwa Peshawar whereby the departmental appeals against the impugned dismissal from service order NO.5932-36, dated 09/09/2011 of Executive District Officer. (E&SE) Peshawar turned down were graciously be set aside and by doing so the appellant very graciously may reinstated into service with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.

سرکت شاق Appollant

Appellant

Through

Saghir Igbal Gulbela

&

Javed Iqbal Gulbela,

Israr Ahmad

Advocates, High Court

Peshawar.

NOTE:-

Dated: 04/02/2019

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

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BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A	/2019
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Nizakat Shah

VERSUS

Director Elementary and Secondary Education Khyber Pakhtunkhwa and others

AFFIDAVIT

I, Nizakat Shah S/O Muhammad Shah R/O Urmar Payan Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

Identified By:

Advocate High Court Peshawar.

(2)

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In	Re	S.A	/2019

Nizakat Shah

VERSUS

Director Elementary and Secondary Education Khyber Pakhtunkhwa and others

<u>APPLICATION FOR CONDONATION OF DELAY</u>

Respectfully Sheweth;

- 1. That the Petitioner is filing the accompanying appeal the contents of which may graciously be considered as integral part of the instant petition.
- 2. That Petitioner has got a good prima facie case and balance of convenience also lies in his favour.
- 3. That delays in filling the accompanying appeal, if any were not deliberate but edue tot the non communication of order, dated 31/10/2018 to the Petitioner.

4. That if the instant application is not allowed and delay is not condoned, the Petitioner shall suffer irreparable loss.

It is, therefore, most humbly prayed that on acceptance of the instant application, the delay, if any, in filling the accompanying appeal may graciously be condoned.

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.

Appellant

Through

Saghir Iqbal Gulbela

Javed Iqbal Gulbela,

Israr Ahmad

Advocates, High Court

Peshawar

Dated: 04/02/2019

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

-	_	~ ·	
ln	Re	S.A	/2019

Nizakat Shah

VERSUS

Director Elementary and Secondary Education Khyber Pakhtunkhwa and others

ADDRESSES OF PARTIES

APPELLANT

Dilawar Ex-IHC, No4165. District Police Peshawar.

ADDRESSES OF RESPONDENTS

- 1. Director Elementary and Secondary Khyber Education Pakhtunkhwa Directorate of Elementary and Secondary Education Civil Secretariat Peshawar.
- 2. The then Executive District Officer (E & SE) Education Peshawar Now District Education Officer (Male) Peshawar.

Appellant

Through

Saghir Igbal Gulbela

Javed Iqbal Gulbela,

Israr Ahmad

Advocates, High Court

Peshawar.

Dated: 04/02/2019

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- He/should to produce his health and age certificate from the civil sufgeon/Medical officer concerned within 10 days of reporting arrival dely as required under the rule(FR.10.SR.4)
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- 10. He will be dealt with under ExD Rules, if he violate Sovi; rules and maulation.

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Mohammad Nawaz/Zashat

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- Father's name and residence MR. Mohammad Shah
- Date of birth by Christian era as 10th Novem nearly as can be ascertained
- Exact height by measurement
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- Left hand thumb and Finger impression of (non-gazetted) officer

Little Finger.

Ring Finger

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Signature of Government servant.

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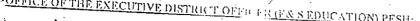
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OFFICE ORDER :-

Whereas you Mr. Nizakat Shah, Chowkidar GPS Ghari Malis Ajund Urmar Payan Peshawar was proceeded against, under the Khyber Pakhtun Khwa Removal from Service (Special Power Ordinance, 2000) on account of her willful and unauthorized absence from duty and whereas the accused official was directed throughnotice at his home address vide notice No. 2333 dated 09/07/2011 o attend the duty and explain his willful absence from duty w.c.from 03/02/2006

And Whereas an absence Notice was served upon the accused official through Daily Newspaper "Aaj" Peshawar dated 24/08/2011 but she remained absent and did not report for duty in response of notice.

And Whereas in the absence of response from the accused official in connection with absence notice and evidence on record, the competent authority is of the view that charges of willful / unauthorized absence have become proved against the

Now therefore, in exercise of powers conferred under section 3 of the then N.W.F.P and now Khyber Pakhtun Khwa, Cemoval from Service (Special Power). Ordinance, 2000, the competent Authority (Exe white District Officer F. & Sec. Edu: Peshawar) is pleased to impose major peralty of Dismissal from Service upon Mr.Nizakat Shah, Chowkidar GPS Ghari Malik Ajum Urmar Payan Peshawar from the date of her unauthorized / willful absence i.e. 03/12/2006

/ Dated Peshawar Copy for information and necessary letion to the

District Accounts Officer Peshawar. Deputy District Officer (Male) Peshawar

ADO Circle Chugha Pura Peshawar.

Supdt: Estab: local cffice. Official concerned...

> Executive Ustrict Officer. l'Ie n: & Sec: Edu: Peshayvar.

JAVED IQEAL Gui Beia Daudzai Lavi Chambei Advocate High Court Peshawar Mdb: 0749-9405501

IN THE COURT OF AXIMUETAH MISHWANI ADDITIONAL SESSIONS JUDGE-VIII, PESHAWAR

Sessions Case # 17/SC

 Date of Institution
 03/02/2017

 Date of Hearing
 11/01/2018

 Date of Decision
 11/01/2018

The State

VERSUS

Nizakat Shah S/O Muhammad Shah. R/O Urmar Payan Peshawar(Accused facing trial)

FIR # 32 DATED 02/02/2006 U/S 302/324/148/149 PPC OF POLICE STATION URMAR, DISTRICT PESHAWAR.

JUDGMENT

- The accused Nizakat Sahh faced trial in afore captioned case.
 - Muhammad Afzal present in Trauma room causality LRH,

 Peshawar along with dead body of his daughter deceased Mst:

 Naila reported the matter to the effect that on the eventful day i-e
 dated 2/2/2006 at 16:30 hours he along with his daughter Mst:

 Naila was present at the place of occurrence. In the meanwhile the
 accused facing trial Nizakat along with other six co-accused
 acquitted duly armed with deadly weapons came there and started
 firing at them with intention to commit their Qatl-e-amd. All the
 accused made indiscriminate firing and as result thereof his

daughter Mst: Naila was hit with the fire shot of the accused facing Daudzai Law Chambo Advorate High Court Poshe war

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State VS Nizakat Shah

trial while he/ the complainant escaped unhurt. The occurrence , stated to has been witnessed by one Shabbir Ahmad and others. Motive for the offence is stated to be an altercation between the son of complainant and sons of Nazakat shah and Mukkaram shah some 4/5 days before the occurrence.

The case was investigated by the IO Muhammad Yousaf Khan SI and on completion of the investigation, complete challan was submitted/ the case was put in court on 03/02/2017. Charge was framed to which the accused Nizakat Shah claimed trial by pleading not guilty. Hence prosecution was accorded opportunity to adduce its evidence which it did as per detailed table given below;



3.

PWs	Name	Role	Documents exhibited
PW-1	Muhammad Nawaz Khan SI	Conducted Partial investigation.	Car of arrest Ex.PW1/1, application for custody Ex.PW-1/2 and application for further custody Ex.PW-1/3
PW-2	Atta Khan constable No. 3110	Escorted the dead body along with relevant documents to the mortuary for the autopsy.	
PW-3	Siraj Constable No. 3937	Witness of recovery memo vide which the IO took into possession blood stained garments of	Ex.PW-3/1

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		deceased Mst. Naila.			
P.W-4	Dr. Sabahat Assistant Professor KTH, Peshawar	Conducted the autopsy on the body of deceased Mst: Naila	Ex.PM including pictorial consisting 06 sheets.		
PW-5	Malik Ahmad • SHO	Submitted supplementary challan	Ex.PW5/1		
PW-6	Amir Nawaz S/O Afridi Khan Khan	Marginal witness to the recovery memo vide which the IO took into possession three empty shell of 303, five empty shell of 7.62 bore and one empty shell of 30 bore	OPD chit EX.PW-7/1 & medico legal report EX.Pw-7/2		
PW-7	Dr. Mir Raza Shah	Examined the injured (by then deceased Mst. Naila)			
Pw-8	Muhammad Javed	Complainant			
PW-9	Muhammad Shabir	Eye witness			
PW-1	Nisar Khan No. 2750	Conducted proceeding under section 204 and 87 Cr.PC	Ex.PW- 10/1 to Ex.PW- 10/28		
PW-I	l Muhammad Ullah SI	Registered FIR on basis of murasila	Ex.PA/1		
PW-	Muhammad Yousaf Khan S	Conducted investigation	Recovery memos Ex.PW- 12/1 and Ex.PW- 12/3, Naka Mad Ex.PW- 12/4, applicatio for search memo Ex.PW- 12/5, FS		



SESSION COUNTRIES

JAVED IQBAL Gul Bela Daudzai Liw Chambei Advoca High Court Peshawar Job: 0345-9405501

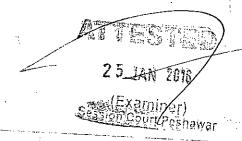
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	~ ·		report Ex.PZ,
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	,		for warrant 204 & 87
.			Cr.P.C Ex.PW
			. 12/6 and
			Ex.PW- 12/7.
PW-13	Muhammad Gul Khan SI	Recorded report of the complainant in shape of murasila	Ex.PW- 13/1 to Ex.PW- 13/3.

On completion of the prosecution evidence, statement of accused facing trial was recorded u/s 342 Cr.PC wherein he professed his innocence, however, he neither opted to be examined on oath nor to produce defense evidence.

Learned Sr.PP assisted by complainant counsel while opening the case contended that the accused is directly nominated for making effective firing at the deceased causing her murder. That the occurrence is fully supported by the ocular as well as documentary evidence brought on record. The accused despite of the fact that the rest of co-accused were tried and consequently acquitted, remained absconder for sufficient long period which by itself indicates his sinister and criminal intention. The role of the accused facing trial is different from the co-accused as role of effective firing has been attributed to the present accused. That as the prosecution witnesses have been remained consistent in their



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State VS Nizakat Shah

depositions against the accused, therefore, it cannot be brushed aside only on the ground that the co-accused on the same evidence have been acquitted. That the witnesses being closely related to the complainant or deceased cannot be disbelieved on this sole ground. Learned counsel placed reliance on SMCR 2009 page 99 and PLD 2002 SC 643.

On the other hand, learned defense counsel contended that the report has been lodged with undue delay which is the base for consultation and deliberation for false implication of the accused. That the complainant has not given any specification of the respective weapons of each of the accused. The recovered empties shell have not been got examined through FSL to ascertain as to whether these have been fired from one weapon or otherwise. That there is material contradictions between the physical situation of the spot and the depositions of the star witnesses and the alleged eye witness also does not support the specific version of the complainant attributing effective role to the accused facing trial: Motive is not established by producing credible evidence. There material discrepancies between the statement of the complainant as well as the witnesses. Learned counsel placed reliance on Pakistan criminal Law General 2017, page 1607, Pakistan Criminal Law General 2015 page 554 and YLR 2014 page 1180.

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Histoned to the arguments of the learned Sr.PP assisted by learned counsel for the complainant as well as defense counsel and perused the record.

The Poculiar indictment against the accused facing trial is that he along with his co-acquitted accused came near the house of the complainant where he was present in the outer door while his deceased daughter Mst. Naila was inside the house when the accused facing trial along with co-acquitted accused allegedly started firing at them. With fire shot of the accused facing trial the deceased was hit and got injured while he/the complainant escaped unhurt. Case of the prosecution rests on the depositions of the perpetrator/complainant PW-8 and the alleged eye witness PW-9 and the proceedings of the investigation conducted by Yousaf Khan Sl PW-12.

- Relevancy, consistency and texture of the evidence produced during trial would be assessed to determine as to whether oral deposition of the witnesses find corroboration by physical circumstances or otherwise.
- Admittedly, unnatural death of the deceased Mst: Naila has been 10. occurred but to evaluate the material produced by the prosecution reference is made firstly to the statement of the complainant Muhammad Javed as PW-8 who has reiterated the contents of his report who has also previously recorded his statement as PW-5 during trial of co-acquitted accused. During his cross examination JAVED IOBAL GUI BOLL when he was confronted with his previous statement he narrated

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that he did not remember his earlier statement to the effect "that in the meanwhile I alongwith PW Shabbir Alunad and my uncle Said Afzal (dead now) came out from my house, the accused named above started firing at us with the intention to commit our Qatl-eamd'. The complainant has shown the alleged motive behind the crime to be an altercation previously taken place between his son Rashid and sons of the accused facing trial. In order to establish this alleged motive the complainant has not produced his son Rashid either before the police during the investigation or in the court and as admitted by this PW-8 that no one from the locality has been produced regarding the fact of the alleged altercation. He further deposes that the firing continued for about 2/3 minutes and the accused party was at distance of about 28.29, 30 paces. He shows himself on the thoroughfare in front of his house at the time of firing while his deceased daughter was at the distance of 2/3 paces from him. He further narrates that at the time of firing his sons, daughters and wife were also present but admits that he has not produced any one from them before the police. In contrast to the peculiar stance of the complainant the alleged eye witness Muhammad Shabir PW-9 during his cross examination contradicts him while stating that at the time of firing the other children and wife of the complainant were not present at the spot. As per his contention he showed kinds of weapon respectively carried by all the accused.



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Muhammad Shabir PW-9 has narrated in the same line of the contents of the report of the complainant, however during his cross examination he expressed his ignorance as to whether he during his statement before the IO has named the present accused facing trial or not. Thus he also does not remember as to whether he had told about alleged motive of the offence in his previous statement or not. He as per his deposition can differentiate in different kinds of weapons but is not able to recount as to whether he had told the police about the kinds of weapons carried by all the accused or not. Site plan Ex.PB has also been prepared at the instance of this PW-9 Muhammad Shabbir. Perusal of the site plan Ex.PB transpires that in between the house of the complainant and the place whereupon the accused facing trial at point No.4 has been shown allegedly making firing, there situates a water tank of which the height of its side walls as per the statements of PW-8 and PW-9 is about 7 to 8 feet. Here the question arises that when the accused facing trial was making firing from behind the wall of water tank, then how the complainant or the eye witness became able to see the acts of all the accused with meticulous specification. Furthermore, the distance shown as per the site plan between the accused party and the complainant is about 30 to 43 paces while needless to repeat, that as per the testimony of the complainant he was present in the out door of his house while the deceased was present in the courtyard of the house, hence again it pricks prudent mind as to how the complainant without any shelter or hindrance

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VS Nizakat Shah

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got escaped while the deceased present inside the house got hit. The logic as advanced by the complainant and the prosecution in the peculiar backdrop of the case in hand, in no way seems congruent with the rule of prudence. It is again worth taking notice of that as per the site plan PW-9 Muhammad Shabbir was inside the house then again question arises as to how he saw and identified the accused making firing from inside the house while as referred earlier, the complainant as PW-8 has taken a different stance regarding presence of the alleged eye witness PW-9.

PW-12 Muhammad Yousaf Khan SI has conducted investigation of the case. During the course of which he has prepared site plan Ex.PB regarding which he admits that during the inspection of the spot he could not notice any sign of bullets on the wall or on the gate of house of the complainant and in same breath states to has been got verified the site plan from the complainant Javed but the complainant in his statement does not utter regarding this fact. The 10 as PW-12 further admits that the report regarding the occurrence was made at 18:50 hours whereas the case was got registered at 21:55 hours which fact is by itself vivid from the record of the case. Admittedly, the report has been lodged with a delay of about 02 hours and 20 minutes while the FIR has been got registered with total delay 03 hours and 05 minutes, hence element of deliberation and consultation for implication of the accused in circumstances cannot be ruled out.

c VS Nizakat Shah

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Amir Nawaz Khan as PW-6 is the marginal witness on the recovery memo Ex.PW-6/1 and Ex.PW-6/2. He during his cross examination has not been able to stand on his stance as described in his examination in chief when he was confronted with his previous statement recorded during the trial of the co-acquitted accused. He further narrates that at the time of inspection of the spot by the IO only he alongwith his brother said Afzal (by then dead) were present with the IO and in their presence the IO collected blood stained earth and empties. This PW-6 negates the stance of the alleged eye witness PW-9 and he is also not consistent in his previous as well as present depositions. This PW-6 has thereafter tried to fill the gap when voluntarily recounting about the presence of Muhammad Shabbir PW-9 on which the defense counsel has put objection and the court has also noticed gesture and demeanor of the witness.

14. PW-7 Dr. Mir Raza Shah has conducted initial examination on the person of deceased Mst: Naila who has observed only one wound on the posterior fontenela with no exit wound and the size of wound has been shown as ½ inch. During his cross examination he is still adamant upon his stance that he could not observe any exit wound however the deceased (by then injured) was referred to neurosurgical ward.

15. Dr, Sabahat Assistant Professor KTH, Peshawar has come forward as PW-4 and has produced the autopsy report conducted on the

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(Examinar)
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State VS Nizakat Shah 36 dated 11/01/2018

body of deceased as Ex.PM. The observation of her PM report is as follows:

On 3/2/2016, at 08:30 hours, I conducted the autopsy of Mst: Naila daughter of Muhammad Javed and found the following.

External Examination:-

A well built female wearing maroon clothes, white banyan and off white chaddar. The chaddar is blood stained. Rigor Mortis & lividity fully developed.

Injuries:-

- 1- FA entry wound on vertex right side 2 X 0.5 cm, 1 cm from midline 14 cm above right ear.
- 2- FA exit wound in the midline vertex 1.5 X 0.5, 16 cm above left ear & 16 above right ear.

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Internal examination:

Scalp, Skull, membranes and brain were found injured while the contents of thorax and abdomen were healthy and stomach was empty. Uterus non-pregnant.

Two vaginal swabs were found negative for semen analysis# 28/06FM/KMC/06.(FSL)

Opinion:

In my opinion the deceased died due to injury to brain and skull because of firearm.

Probable time between death and PM......8 to 12 hours.

During her cross examination this PW-4 narrates that she found two injuries on the body of deceased i-e the entry wound as

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ATTESTED 25 LAN UTS well as exit wound and as per her observation direction of missel from downwards to upwards. The medico legal report of the deceased, blood stained garments of the deceased and the FSL report Ex.PZ would aptly indicate the unnatural death caused with firearm of the deceased but keeping in view the contradictions between the initial medico legal report and the subsequent autopsy conducted on the body of the deceased, it seems not to has been occurred in the mode and manner as described and contended by the complainant as well as prosecution.

- 16. The nutshell evaluation of the prosecution evidence on its appraisal can be summarized as,
 - i. The star witnesses are not coherent in their depositions.
 - ii. As per rule of prudence it is not repellent to the common sense that seven persons making direct firing from such a close distance of about 30 to 40 paces and the complainant standing in the outer door of his house would be escaped while the deceased present inside: the house sustain bullet injury.
 - iii. Again it does not stand to reason that the complainant would be able to identify with specification the accused facing trial making effective firing proved fatal to the deceased out of seven persons making indiscriminate simultaneous firing.
 - iv. Statements of the star witnesses is replete with unqualified improvements as PW-8/complainant during

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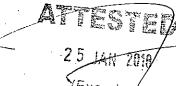
his previous statement has shown his uncle Said Afzal and PW-9 Muhammad Shabbir present in the thoroughfare at the time of occurrence but in his subsequent statement against the accused facing trial he could not stand on his earlier stance and thus PW-9 the alleged eye witness has also made noticeable improvements in his statement.

I by exhibiting my utmost reverence and regards to the precedents relied by the prosecution, am of the considered view that peculiar facts and circumstances of the case in hand are not identical to the ones of the referred precedents.



17. As aftermath of the appraisal of the prosecution evidence and material on record, the court is constrained to hold that the case of the prosecution against the accused facing trial suffers from material discrepancies creating bunch of doubts regarding guilt of present accused. As it has been the well embedded principle of criminal justice that prosecution has to prove its case beyond any shadow of doubt and any reasonable doubt arises is to be utilized and extended in favour of the accused, hence, the court is unhesitant to hold that the prosecution could not substantiate its indictment against the accused and the case is shrouded with mystery of uncertainty. Therefore, by extending benefit of doubts to the accused Nizakat Shah, he stands acquitted of the charges

JAVED IO BAL CII Bela Dau zai Liw Cha Abe: Advoca a Nigi Goum Pilihawar IA San ang Balar



(Examine)

forthwith if not required in any other case.

18. Case property be dealt with accordance with law after period of appeal/revision. File be consigned to record room after necessary completion and compilation.

ANNOUNCED 11/01/2018

(Azimullah Mishwani) Addl: Sessions Judge-VIII, Peshawar.

CERTIFICATE

Certified that this Judgment consists of Fourteen (14) pages. Each page has been checked, signed, and corrected accordingly.

(Azimullah Mishwani)
Addl: Sessions Judge-VIII,
Peshawar

CERTIFIED TO BE TRUE COPY

25 JAN 20/8

(Examiner)
Capying Agency Session Court
Peshawar

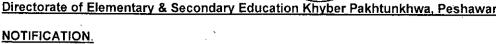
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JAVED IQBAL Gui Bola Daudz Thaw Chamb Advocate Atich

الما در المراس المحاسب درخوات براد انکوائرے فرمانے برخلاف سَدرانمادج گردننت برائر مربع رجن رمر المان سي · com is to the !- de - in من المرابات 302/148/149 (p. 22-2-2006 = 0.32 / Line 1/2 - 2/ نامند الرف المستان الم The side with the side of the the wine is a super in the second of the sec 0-5in /in 1-12-2006 1-2-2006 1-2-2006 1-2-مند الفلاف المد و المعان ولد ملا المعان ولد المعان ولد المعان ولد المعان ولد ملا المعان ولد المعان - Luojsii - civi 17301-1662087-7 مراز الم obsin _ when we will are a fing. نزامَن شاه 0315-50080088 Jem 2) = 6 = 5/10/1 = 1/1/2-معول من وره من وره من المعالم من 17301-1662087-7 مزائد هم ولد محد شاه







WHEREAS, disciplinary proceedings under the Khyber Pakhtunkhwa Government Servants (E&D) Rules-2011 were initiated against Mr. Nazakat Shah Ex-Chowkidar GPS Garhi Malik Ajoon Peshawar by the DEO (M) Peshawar, vide Endst No 5932-36 dated 09/09/2011.

AND WHEREAS, on finality of disciplinary proceedings, major penalty of "DISMISSAL FROM SERVICE" was imposed upon Mr.Nazakat Shah Ex-Chowkidar GPS Garhi Malak Ajoon Peshawar by the DEO (M) Peshawar/competent authority.

AND WHEREAS, the aggrieved Ex-Chowkidar submitted an appeal dated 02/02/2018 to the Director E&SE Khyber Pakhtunkhwa Peshawar (appellate authority) for redressal of his grievances.

AND WHEREAS, the appellate authority in pursuance of Section 17 read with rule (1) & (2) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, called for the record of the case and comments from the concerned DEO vide letter No. 563 dated 02/02/2018 for consideration of the appeal.

AND WHEREAS, the DEO concerned provided the requisite record/comments accordingly vide his letter No. 4527 dated 21/03/2018.

AND WHEREAS, to know the factual position the Director E&SE (appellate authority) ordered an inquiry in the matter by appointing Mr. Abdur Rashid Principal GHSS Bagnotar Abbottabad as Inquiry Officers vide Notification No. 1537-40 dated 07/08/2018.

ANS WHEREAS, consequent upon perusal of the enquiry resubmit/relevant record, reason and circumstances by the appellate authority under which Mr. Nazakat Shah Ex-Chowkidar GPS Garhi Malak Ajoon Peshawar (appellant) was dismissed from service, the appeal submitted by the aforesaid Ex-Chowkidar for reinstatement was not found tenable.

NOW, THEREFORE, in exercise of the powers conferred under Section-17 rule (2) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, the Director E&SE/appellate authority "uphold the order of penalty and reject appeal" lodged by Mr. Nazakat Shah Ex-Chowkidar GPS Garhi Malak Ajoon Peshawar (appellant)

DIRECTOR

Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar

10653-55 /F.No.A-20/c-iv/PF Nazakat Shah Chow: Dated Peshawar the

Copy of the above is forwarded for information and n/action to the:-

1- District Education Officer (Male) Peshawar

Appellant concerned.

3- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admn)

E&SE, Khyber Pakhtunkhwa, Peshawar

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JAVED KOBAL Gui Bata izzi Liw Chambe: te High Court Peshawar 5-04-5697

سال مس دیل عربی دسان جازم الله اس می نیاد می ن ادفر بایان کفیل مفلح بینارد بط یم ته سامل 2 'w so Gud (Gps GhaviMalik Himd) مرس سرباع ر حربط عد صاب مح ير ع الماح عمر المعاام عمر عمر المعالم المعالم المعالم المعالم المعالم عمر عمر المعالم عمر المعالم المعالم المعالم عج ما ، ح ساسًا سا سان عدالت معنور ما في الماء الم من من المرب المونم من بده هور بقاء ا سه یع عددت هو د د یع دین کردیا -ویم کہ میں نے ج ب میابان کو آبیا ددفورسا میں کو۔ 33-16 دیا گیا سین عدائتی معیام کے بارود ? en si i en catimo (esimo) المالية ٠ اد ال ما د المانى عمر من ادر ال ما د (no me on 160 on 1850 on 1800 on

قى تغانت مىن ئۇرىيى بىرى. ارر درانىگى مارى عملی نے میں 18-1-11 فی ماین تا برن در ا م ب سابان سے بندر نفر در فراست ابیل کا حالی يع من عمر و مدان والا ما مد في سوا اس مے معروس مجر دربار ، کال سا م سائل ٢ يـ ـ ي المسر د م و م الده د به ما ole inti ننز س ساه و لد کمد ساه ا دعر با بان , کعبل رضلع نسا در

> JAVED IOBAL Gul Bela Daudzel Law Chamber Advocate I/gh Coult Peshawar Mc5: 10/45-9405501

То

Mr.Nazakat Shah

Ex-Cowkidar GPS Garhi Malak Ajoon Peshawar

Subject:

DEPARTMENTAL APPEAL:-

Memo:

I am directed to refer to your appeal dated 01-01-2019 for re-instatement in service and to state that the appellant authority rejected your departmental appeal.

Assistant-Director (Admn)
Directorate of E&SE K.P., Peshawar

Endst; No.

Copy forwarded to the: -

1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admn)
Directorate of E&SE K.P, Peshawar

JAVED FQBAL Gul Bela Daudzel Law Chamber Advocaty High Count Peah.......

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مقرر کہا ہے۔ کہ میں ہر پیٹنی کاخود یا بز ربعہ مختار خاص رو بروعدالت حاضر ہوتا رہوزگا۔ کور بوقت بکارے جانے مقدر مہوکیل صاحب موصوف کواطلاع و بے کرحا ضرعدالت کرونگاءا گربیثی پرمن مظہر حاضر نہ ہوااور مقدمہ میری غیر حاضری کی وجہ سے کسی طور برمیرے برخلاف ہوگیا تو صاحب موصوف اس کے سی طرح ذیمہ دارنہ ہو نگے نیز وکیل صاحب موصوفہ مقام کچہری کی کسی اور جگہ یا کچبری کےمقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ ہو نگے۔اگر مقدمه علاوہ صدرمقام کچہری کے سی اور جگہ ساعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے بیچھے پیش ہونے پر من مظہر کوکوئی نقصان ہنچاتو اس کے ذمہ داریااس کے واسطے سی معاوضہ کے اداکر نے یا مختارانہ واپس کرنے کے بھی صاحب موصوف ذ مه دارنه ہو نگے ۔ جھے کوکل ساختہ بر داختہ صاحب موصوف مثل کردہ ذات خو دمنظور وقبول ہوگا۔اور صاحب موصوف کوعرضی دعویٰ وجواب دعویٰ اور درخواست اجرائے ڈگری ونظر ثانی اپیل ونگرانی ہرتتم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی تھم یا ڈگری کے اجراء کرانے اور ہرتم کے رویبے وصول کرنے اور رسید دینے اور داخل کرنے اور ہرفتم کے بیان دینے اور سپر وٹالثی وراضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔اور بصورت اپیل وبرآ مدگی مقدمه یامنسوخی ڈگری بکطرفه درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کوبشر طادائیگی علیحده مختارانه پیروی کاا ختیار ہوگا۔اوربصورت ضرورت صاحب موصوف کوبھی اختیار ہوگایا مقدمه مذکور ه یا اس کے سی جزوگی کاروائی کے واسطے یا بصورت اپیل ،اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اورا یسے مشیر قانون کے ہرا مرد ہی اور ویسے ہی اختیارات حاصل ہو نگے جیسے کے صاحب موصوف کو حاصل ہیں۔اورد وران مقدمہ میں جو کچھ ہر جانبالتواء پڑے گا۔اورصاحب موصوف کاحق ہوگا۔اگروکیل صاحب موصوف کو بوری فیس تاریخ بیثی سے پہلے ادانہ کرونگا تو صاحب موصوف کو بوراا ختیار ہوگا کہ فکر مدکی پیروی نہ کریں اورالی صورت میں میرا کوئی مطالبہ کسی قتم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہٰذا مخیار نا کہ کو

SEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA.

SERVICE APPEAL NO.178/2019

Nazakat Shah

V/S

Education and others

REPLY ON BEHALF OF RESPONDENTS.

Respectively Sheweth:

The Respondents submits as under:-

PRELIMINARY OBJECTIONS:

- 1. That the Appellant has no cause of action /locus standi.
- 2. That the Appellant has concealed material facts from this Hon,ble Tribunal.
- 3. That the Appellant has been estopped by his own conduct to file the instant appeal before this Hon'ble Tribunal.
- 4. That the instant Appeal is badly time barred.
- 5. That the instant Appeal is not maintainable in its present form.
- 6. That the instant Appeal is bad for mis-joinder and non-joinder for the necessary parties.
- 7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.
- 8. That the instant Appeal is barred by law.
- 9. That the Appellant does not fall within the ambit of aggrieved person.

ON FACTS.

- 1. That Para No.1 pertains to record.
- 2. That Para No.2 is incorrect and denied on the grounds that the appellant has been found guilty of willful absence from his duty, and ASDEO (M) reported the appellant willful absent from his duty. Regarding his absentee the ASDEO Urmar Circle brought the matter in the knowledge of DEO (M) Peshawar vide letter No. 380-2 dated 02-05-2011 & letter No. 447-2 dated 28-06-2011.

(Copy of letters are attached as Annex: A &B)

3. That in reply to Para No.3, it is submitted that FIR No. 032 dated 02-02-2006 was lodged against the appellant at Police Station Urmar Payan District Peshawar and since, then he was absent from his duty.

Furthermore, the appellant was bound to brought the matter in the knowledge of the department but he did not acted accordingly.

Moreover, the department published absentee notice in daily news paper under the rules.

(Copy attached as Annex: C)

4. That Para No.4 is incorrect and misleading. The appellant was willful absent from his duty since long and violated rules, therefore, the appellant was dismissed under the rules.

5. That Para No.5 is incorrect, misleading and against the facts. Detail reply has been given in the above Para.

6. That in reply to Para No.6, it is submitted that the respondent department conducted inquiry and in light of inquiry report the respondent department decided the appellant appeal

decided the appellant appeal (Copy of inquiry report is attached as Annex: D) (E)

7. That Para No.7 is incorrect, misleading and against the facts. The said Para has been already discussed in the above Para.

8. That Para No.8 is incorrect, misleading and against the facts. The Appellant has no cause of action to file the instant appeal in this Hon'ble Service Tribunal.

GROUNDS

- A. That Ground-A is incorrect, misleading and against the facts. The Appellant was willful absent from his duty and violated the rules and the competent authority dismissed him from his duty according to law & rules.
- B. That Ground-B is incorrect & misleading. The detail reply has been given in the above Para of facts. Moreover, the Appellant was willful absent and violated the law & rules.
- C. That Ground –C is incorrect, misleading and against the facts. Detail reply has been given in the above Para.
- D. That Ground-D is incorrect & misleading. The Appellant was willful absent from since long without any information and the department dismissed him under the rules.
- E. That Ground-E is incorrect & misleading and against the facts. The department conducted inquiry and the inquiry officer informed the Appellant regarding the inquiry but he did not appear before the inquiry officer.
- F. That Ground –F is incorrect, misleading and against the facts. Detail reply has been given in the above Para.
- G. That Ground –G is incorrect, misleading and against the facts. The dismissal order of the Appellant is according to law and rules because he was willful absent from his duty since long without any information & permission.
- H. That the respondents have also seeks the permission of this Hon'ble Tribunal for further / additional grounds at the time argument.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.

District Education Officer

(Male)Peshawar

(E &SÉ) KPK Peshawar

Annes A P-3

استان وسر کف آفیسر سرکل پغلبوره نبیر کے- 353 مورند 110 فیرار کا

جناب ڈیٹی ڈیٹ کٹ آفیسر (ایلمنٹری اینڈ سیکنڈری) ایجو کیشن سناج بیٹیا ور

ٔ عنوان: _ نبیرحاضرې ر بورٹ نزاکت شاه چوکیندار یی لی^{الی} کرسی ملک اجون

جاب عالى!

آپ کی طرف سے بھیجا گیا سراسانیسر 703 بمور نہ 2/3/2011 ملاجس میں نزاکت شاہ چوکیدار کے بارے میں

ر بورٹ مانگی گئی ہے۔

نزاکت شاہ جو کیدارا ہے۔ کول ہے مورند <u>312/2006 ہے</u> تا حال غیر یا ضرے ۔ ندکورہ جو کیدارد فعہ 302 کے کیس میں ملوث ہے لہذار بور شار حال کی جاتی ہے۔ (رجی^{ا معلم}ین منابقار بوشی کا پیاں اندین) جبکہ غیر حاضری کا نوٹس دیا ہے (کا پی لف ہے) کیکن مذکورہ چو کیدارا بھی تک حاضر نہ ہو سکا۔ لہذا مذکورہ جو کیدار کے خلاف تا دین کاروائی کی جائے۔

استنده وسر کن آفیر سرکل پخلبوره استنده وسر کن آفیر سرکل پخلبوره استار کرده ا

1

سندي في المركزية في المغلوري 5-5-2010 31 68-: في ذير كث أنيس (مردان) براتمري with spreadly the second اور شه پراغری اول ترشی ما یا ایرن کاچر دیدا به 302 سیس میں مغرور ہے (ربورٹ ارسال کی گئی ہے) جس کی وجہ يْرِكُور وسلول بين سَكُولَ لِ حفاظت اور و بَكِر دُنامِيهِ بِهَالَ كالمسئلة إيزار ووا-سمور زمن الله به المرائ الموساد من سيان من ووجو كيداركام كرر ہے جن ميں سے ايك جو كيدار شهر ياركوسكول ميار ميرك ۔ نتہ اورات کی رضامت کی سے عارضی طور ہے رہتی ماکہ۔ اجوان جیجوالیا گیا اوراس سکول کا مسلم کیا گیا۔ لیکن گڑھی ملک، اجون کوجو بدار المسلم الأكرية التراب المسال أتنان في المن أنه بين الروية عن المسلم ويا كيار جس سال بات كا خطره برا ها كيا ته كدر المن ، اجون شيه كولى سرقارك الأك إر يكارة كوانف ان يهنج اسكنا هي -ئىرۇلارىكى ئىيالىن ئېسراداردىزىمىيانە ئان دەچەكىيدارىيان سەلىيدا گرائىك چوكىيداد كوچى ئىي الىين گرەھى ماكە دجون تعينات كىيا المنظقة الساسته مناكسي ورتك على موسكتات ر پیرے نہ یکا روائی کے لیے ارسال خذمت ہے۔ نوث: (مِنْ بَحِرِ جَى لِيَ البِسِ نَسِرِ الرمز مِيانِيدَى NOC الرشير إرجو كيدار كى درخواست لف سيا).

B2

P-5

OFFICE OF THE ASSISTANT DISTRICT OFFICER (M) RPY: CIRCLE CHUGHAL PURA

No. 380-2

Dated 03/05/2011

To,

The Deputy District Officer (Male) Pry: Peshawar.

Subject:- Report of Pay in R/O Mr. Nizaqat Shah (Chowkidar) GPS Garhi Malik Ajun(Urmar Payan) Peshawar.

For your kind information the pay of Mr. Nazaqat Shah (Chowkidar)

GPS Garhi Malik Ajun who involved in 302 (murder case) is stopped in the month of

October 2006 by the phonic information given by Pay Centre In charge Urmar Payan.

So the report is submitted for further necessary action please.

Assistant District Officer

(M) Pry: Circle Chughal Pura

Pay received web. 3/2006 10/2006

27 months -?

Deactivation Dec, 2006

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CENTITY OF EIGHT OF SECONDERLY EQUATIONS KINDER F. F. IN INCHAS POSITIONER

MOUTE DISTRIBUTE

WindERtries disciplinary proceedings under the Khybu Pillinthwa Government, Servicits (END) Rules-2011 were initiated against Mr. Nazakut Shah ExiChulykidar GPS Galhi Malik Ajoon he shower by the DEO (M) Peshawar, vide Endat No 6932-36 dates 10/09/2011.

AND WHEREAS, on finality of disciplinary product not. - or ponerty of "DISTRIBSAL FROM SERVICES will be posed upon Mr Nazdiat Shoh Ex-Chushusar GPS Gurhi Malax Ayon Peshawar by the DEO (M) Pashawaricompetent - _thority

AND VHEREAS, the aggreeved Ex-Chowklers submitted an appeal dated 02/02/2018 to the Director E&UF Khyber Powhtunuthwa Pochawar (uppc. ata autho. ty) for riidressal of his girevances

AND WHEREAS, the repellate authority in pursuance of Section 17 read with rule (1) & (2) of the Nayber Portunktival Government Servants (Efficiency & Duk pline) Rules-2011, called for the record of the case and cumments from the concorned DEO vidu letter No. 563 cated 02/02/2018 for concreteration of the appeal.

AND WHEREAS, the DEC concerned provided the requister record/consments recordingly vidu his letter No. 4527 dutod 21.03/2618.

AND WHIELEAS, to know the focuse position the Director F&SE (appollate authority) ordered as inquiry at the mertar by appointing Mr. Abdur Rashid Principul GHSS Baginoter Abbottabad as Inquiry Officers vide Notification No. 1537-40 dot3d 07/03/2018.

ANS WHEREAS, consequent upon perusal of the enquiry report, relevant record, masen and curcumstances by the appellate authority under which lift. Nezakat Shop Ex-Chowfudar CPS Garthi Etunik Ajoon Pesitawa, (appellant) was dismissed from survice, the appeal submitted by the aforce और हैं। Chawkdar for rendicionent was not found tenable.

NOW, THEREFORE, in exercise of the powers conferred under Section-17 rule (2) (3) of Khyasir Pathtunkhwa Government Servants (Effectingly & Duciptine) Rults-2011, the Director E&SE/sepullate authority "uphold the order of conglity and relief apposite lodged by Mr. Nuzakat Shaw Ex-Chow....ar GPS Corbi Mulak Ajood Peshuwur (appellang

> **DIRECTOR** 12-5-

> > 4 Endst: No.__

Elementary & Secondary Education Khyber Seichtunktiwa, Peshawar

wazdket Sheh Chour Dated Pechawar th

netto their

Copy of the above is forwarded for and District Education Officer (Mcla) Pashawar

Appellant concerned.

PA to the Director E&SE Knyber Pryntal thwa Perhawa

Assistant-Director (Acima) E&SE Knyder Prichtunkhwa, Pestawar

30/10

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In S.A# 178/2019

Nazakat Shah

Versus

Director E&SE KPK and Others

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لنزائن سناه

Appellant

Through

JAVED IQBAL GULBELA

Advocates, High Court

Peshawar

Dated: 17/09/2019

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In S.A# 178/2019

Nazakat Shah

Versus

Director E&SE KPK and Others

REJOINDER ON BEHALF OF THE APPELLANT TO THE COMMENTS FILED BY THE RESPONDENTS

Respectfully Sheweth, Reply to Preliminary objections:

- 1. Incorrect and Denied. The appellant has got a good cause of action.
- 2. Incorrect and denied.
- 3. Incorrect and denied.
- 4. Incorrect and denied. Moreover the appeal of the appellant is in time.
- 5. Incorrect and denied.
- 6. Incorrect and denied.

- 7. Incorrect and denied.
- 8. Incorrect, misleading, hence denied.

 Moreover, appeal of the appellant is according to law.
- 9. Incorrect and denied.

On Facts:

- 1. No comments.
- Incorrect, misleading and hypocritic, hence denied.While that of the main appeal is true and correct.
- 3. Misleading & hypocratic, hence denied. While true, and detail picture is given in the corresponding para of the main appeal.
- 4. Incorrect, misleading and hypocratic, hence denied. While that of main appeal is true & correct.
- 5. Incorrect, wrong, misleading and hypocratic hence denied. While true and detailed picture is given in the corresponding paras of the main appeal.
- 6. Incorrect, hypocratic and misleading. While that of the main appeal is true and correct as well as a true and detailed picture is given in corresponding paras of the main appeal.

- 7. Incorrect, hypocratic and misleading. While that of the main appeal is true and correct as well as a true and detailed picture is given in corresponding paras of the main appeal.
- 8. Incorrect, misleading, malicious and hypocratic, hence denied. While that of the main appeal is true and correct.

On Grounds:-

- A. Hypocratic and malicious. True picture is given in the main appeal.
- B. Incorrect and malicious. While that of the main appeal is true and correct.
- C. Misleading and hypocratic. True and detailed picture is given above and as well as in appeal.
- D.Incorrect and denied, as well as hypocratic and malicious, while that of the main appeal is true and correct.
- E.Incorrect, misleading & malicious, hence denied. While that of the main appeal is true and correct.
- F. Incorrect and denied.
- G.Incorrect and denied. While that of the main appeal is true and correct.

H.Incorrect, hypocratic, hence denied. While that of the main appeal is true and correct.

It is, therefore, most humbly prayed that on acceptance of instant rejoinder, the appeal of the appellant may graciously be allowed, as prayed for therein.

Through

الزار مُت نناه Appellant____

JAVED IQBAL GULBELA

ISRAR AHMAD &

SAGHIR IQBAL GULBELA, Advocates High Court

Peshawar

Dated: 17/09/2019

BEFORE THE HONBLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In S.A# 178/2019

Nazakat Shah

Versus

Director E&SE KPK and Others

AFFIDAVIT

I, Nazakat Shah (Appellant), do hereby solemnly affirm and declare on oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.

فرائش ناه

Deponent

CNIC: 17301-1662097-7

Cell: 0313-8864866

Identified By

Javed Iqbal Gulbela Advocate High Court Peshawar