

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1226/2015

Date of Institution ... 30.10.2015

Date of Decision ... 06.12.2018

Mr. Sajawal Khan, Shift Incharge (BPS-12), O/O the Emergency Rescue Service 1122, Station No.66, Sherpaw, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For official respondents.

MR. ASAD JAN DURRANI,
Legal Advisor

--- For respondents no. 3 & 4.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)
--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 1225/2015 titled Ihsan Ullah and appeal no. 819 titled Bakht Rawan as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. Brief facts of the case are that the appellant was serving in Rescue 1122 as Shift Incharge. On the allegations of professional misconduct disciplinary proceedings were initiated and upon conclusion major penalty of dismissal from

service was imposed on him vide impugned order dated 05.06.2015. He preferred departmental appeal on 03.07.2015, which was not responded, hence, the instant service appeal on 30.10.2015.

ARGUMENTS

4. Learned counsel for the appellant argued that disciplinary proceedings were conducted against him on the allegations of convening a meeting of Station Coordinators etc. and involvement in undesirable activities. A show cause notice was served on him on 01.04.2015 to which he replied accordingly. Vide impugned order dated 05.06.2015 his services were terminated. Impugned order was against the law and rules. Action of the respondents was violative of Article- 4 and 25 of the Constitution. Other formalities were also not observed.

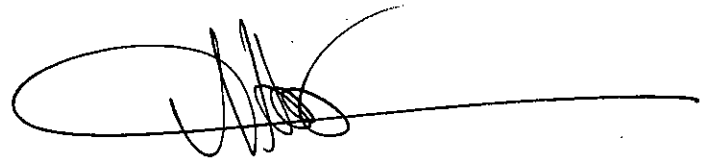
5. On the other hand learned Assistant Advocate General assisted by Legal Advisor for respondents no. 3 and 4 argued that the instant appeal was not maintainable on the ground that the appellant was not a civil servant. He contended that as per Section-22 of the Khyber Pakhtunkhwa Emergency Rescue Service Act 2012 (Khyber Pakhtunkhwa Act No. XIV of 2012) the appellant was a public servant, therefore, this Tribunal lacks jurisdiction to adjudicate on the subject matter.

CONCLUSION

6. Vide order sheet dated 30.08.2018 the learned Deputy District Attorney raised objection on the maintainability of the present appeal, as the appellant was not a civil servant. Attention was invited to Section-22 of the Khyber Pakhtunkhwa Emergency Rescue Act 2012 where-under all employees had been declared public servants. Learned counsel for the appellant was directed to produce any documentary evidence to establish that the appellant was a civil servant. Despite affording numerous opportunities, he was unable to produce any document in support of his claim. His attention was also drawn to departmental appeal of the appellant dated 02.07.2015, where he had taken plea of not

being a civil servant. In view of the above stated facts as case of the appellant, is hit by under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, so he cannot invoke the jurisdiction of this Tribunal.

7. As a sequel to above, the appeal is dismissed. The appellant may seek remedy before any other appropriate forum, if so advised. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
06.12.2018

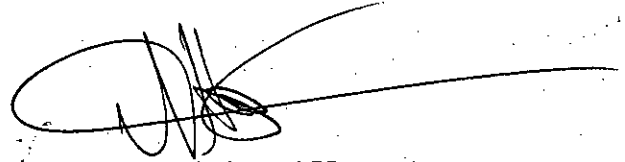
Order

06.12.2018 Counsel for the appellant present. Mr. Asad Jan Durrani, Legal Advisor for respondents no. 3 and 4 alongwith Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for official respondents and present. Arguments heard and record perused.

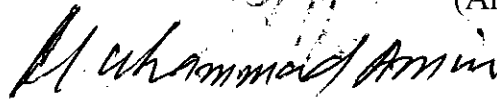
Vide detailed judgment of today of this Tribunal placed on file, the appeal is dismissed. Parties are left to bear their own cost.

File be consigned to the record room.

Announced:
06.12.2018



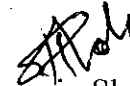
(Ahmad Hassan)
Member



(Muhammad Amin Khan Kundi)
Member

Service Appeal No. 819/2015

18.09.2018 Appellant with counsel present. Mr. Kabirullah Khattak, Additional AG for respondents 1 & 2 and Mr. Asad Jan Durrani, Advocate for respondents No. 3 & 4 present. Requested for adjournment. Adjourned. To come up for arguments on 19.10.2018 before D.B.


(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

19.10.2018 Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 09.11.2018 before D.B.


(Hussain Shah)
Member


(Ahmad Hassan)
Member

09.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 06.12.2018.


Reader

30.08.2018

Appellant with counsel and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. At the very outset of hearing learned Deputy District Attorney raised objection on the maintainability of the present appeal, as the appellant was not a civil servant. Attention was invited to Section-22 of Khyber Pakhtunkhwa Emergency Rescue Act, 2012, whereby all the employees have been declared as to be Public servants within the meaning of Section -21 of Pakistan Penal Code, 1860. Subsequently these employees were regularized under Section-23 of the said act. Both the learned counsel for the appellant and learned Deputy District Attorney are directed to produce documentary evidence through which it can be established that employees of Rescue 1122 are the civil servants or otherwise. To come up for record and arguments on 11.09.2018 before D.B.



(Ahmad Hassan)
Member



(Muhammad Amin Khan Kundi)
Member

11.09.2018

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents No.1 & 2, learned counsel for respondents No.3 & 4 also present. Learned counsel for respondents No.3 & 4 seeks adjournment. Adjourned. To come up for arguments on 18.09.2018 before D.B.



(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

27.06.2018

Appellant with counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG for respondents No. 1 & 2 present. Case called several time but no one present on behalf of respondents No. 3 & 4 hence, they placed ex-parte. To come up for arguments on 16.08.2018 before D.B.

(Muhammad Amin Kundi)
Member

(Muhammad Hamid Mughal)
Member

Post Script
27.06.2018


In the meanwhile learned counsel for respondents No. 3 & 4 appeared and submitted application for setting-aside ex-parte proceedings initiated against respondents No. 3 & 4. Application allowed. Ex-parte proceeding initiated against respondents No. 3 & 4 is hereby set-aside. To come up for arguments on the date already fixed.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

16.08.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for on ~~30.08~~ 2018 before D.B.

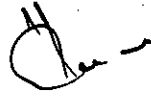

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

04.04.2018

Counsel for the appellant and Addl; AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for record and arguments on 10.04.2018 before D.B.



(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

11.04.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Adjournment requested. adjourn. To come up for arguments on 27.04.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

27.04.2018

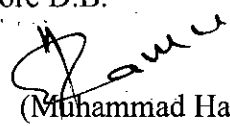
Junior counsel for the appellant and Mr. Zia Ullah, DDA for the respondents present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 27.06.2018 before D.B.

Reader

12. 11.07.2017


Mr. Muhammad Maaz, Advocate on behalf of counsel for the appellant and Asst: AG for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.11.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

06.11.2017

Appellant in person present. Mr. Usman Ghani, District Attorney for the respondent No. 1 also present. None present on behalf of respondents No. 2 to 4 therefore, fresh notice be issued to respondents No. 2 to 4 for attendance. Appellant also requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for attendance of respondents No. 2 to 4 and arguments on 15.01.2018 before D.B.

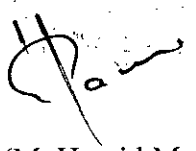

(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

15.01.2018


Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Addl: AG for the respondents present. Lawyer community on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned. To come up for arguments on 15.03.2018 before D.B.



(Gul Zeb Khan)
Member


(M. Hamid Mughal)
Member

15.03.2018

Learned counsel for the appellant present. Learned Assistant Advocate General on behalf of respondents present. Learned counsel for the appellant seeks adjournment. Adjourned by way of last chance. To come up for arguments on 04.04.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

23.11.2016

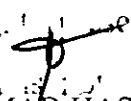
Counsel for the appellant and Additional AG for respondents present. Learned counsel for the appellant submitted rejoinder copy whereof handed over to learned Additional AG. To come up for arguments on 28.2.17 before D.B.

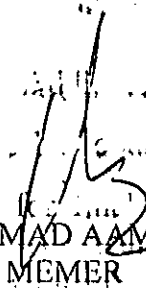

(ABDUL LATIF)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

28.02.2017

Counsel for the appellant, Asst. AG for official respondent No.1 and counsel for respondents No.2 to 4 present. Learned Counsel for respondents No.2 to 4 requested for adjournment. Parties are directed to assist the Tribunal on the point of maintainability. To come up for arguments on the point of maintainability on 08.05.2017 before D.B.


(AHMAD HASSAN)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

Member

Chairman

8.05.2017

Clerk of
Counsel for the appellant and Addl. AG for the respondents present. Due to strike of the bar counsel for the appellant is not available. To come up for final hearing for 11.07.2017 before D.B.


Member


Chairman

Ihsanullah vs Govt

1226/15

30.05.2016

Counsel for the appellant and Mr. Asad Jan Durrani, Advocate/Legal Advisor for respondents No. 3 & 4 along with Addl. AG for all the respondents present. Wakalatnama submitted by Legal Advisor and placed on file. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is further extended subject to cost of Rs. 500/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 28.07.2016 before S.B.


Chairman

28.07.2016

Clerk of counsel for the appellant and Mr. Asad Jan Durrani, Advocate for respondents No. 2&3 along with Addl. AG for the respondents present. Written reply not submitted despite repeated adjournments including last opportunity which was further extended subject to payment of cost of Rs., 500/-. No further opportunity is granted. The appeal is assigned to D.B for rejoinder and final hearing for 23.11.2016.


Chairman

25.08.2016

On the request of learned counsel for respondents No. 2 & 3 file has been requisitioned. Submitted application for setting aside proceedings dated 28.07.2016 against respondents No. 2 & 3. Notice of application be issued to counsel for the appellant for reply and arguments on the date fixed i.e. 23.11.2016 before the D.B.


Chairman

*Noted for
application of
1/9/2016*

02.12.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving in Rescue 1122 as Shift Incharge and subjected to inquiry on the allegations of professional misconduct and dismissed from service vide impugned order dated 5.6.2015 where against departmental appeal was preferred on 3.7.2015 which was not responded and hence the instant service appeal on 30.10.2015.

Appellant Deposited
Security & Process Fee

That neither regular inquiry was conducted nor charge sheet or statement of allegations issued and, moreover, no opportunity of personal hearing was extended nor law under which the punishment awarded was mentioned or taken into account.

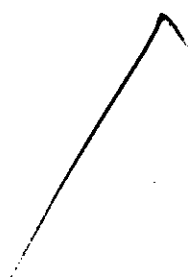
Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 30.3.2016 before S.B.


Chairman

30.03.2016

Appellant in person and Assistant A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 30.5.2016 before S.B.





Chairman



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1226/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.11.2015	<p>The appeal of Mr. Sajawal Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR -</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>12-11-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.11.2015	<p>Agent of counsel for the appellant present. Seeks adjournment. Adjourned to 2.12.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Sajawal Khan Shift In charge Rescue Service 1122 received to-day i.e. on 30.10.2015 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

1. Annexures of the appeal may be attested.
2. Approved file cover is not used.
3. Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1199 /S.T,

Dt. 2-11 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Note:

Sir,

*All objections have been removed,
hence re-submitted today dated 4/11/2015.*

*1199
4/11/2015*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

~~APPEAL~~ NO. 1226 /2015

SAJAWAL KHAN

VS

GOVT: OF KPK

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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5.	Reply	D	20.
6.	Impugned order	E	21.
8.	Departmental appeal	F	22- 23.
9.	Vakalat nama	24.

APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1226 /2015

A.W.F. Province
Service Tribunal
Diary No. 1307
Dated 30-10-2015

Mr. Sajawal Khan, Shift Incharge (BPS-12),
O/O the Emergency Rescue Service 1122, Station No.66,
Sherpaw, Khyber Pakhtunkhwa, Peshawar **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Relief and Rehabilitation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General Rescue 1122, Khyber Pakhtunkhwa, Peshawar.
- 4- The Administrative Officer Rescue 1122, Khyber Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 05.06.2015 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED ON THE APPELLANT WITHOUT ANY REASON AND WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order 05.06.2015 may very kindly be set aside and the appellant may kindly be re-instated with all back benefits. Any remedy which this august Tribunal deems that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant was appointed as Shift Incharge (BPS-12) in the Rescue 1122 project in the year 2010. That after appointment the appellant submitted his charge report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the appointment order is attached as annexure **A.**

Handwritten notes: "Filed to day" and "Sheweth" with a signature and date "30/10/15".

Handwritten note: "re-submitted to-day and filed."

Handwritten signature and date "30/10/15" with the word "Registrar" written below.

- 2- That in the year 2012 the said project of rescue 1122 services was brought in to regular budget through enactment passed by the Provincial assembly of Khyber Pakhtunkhwa. That in light of section 23 of the said Act the services of the appellant were regularized. Copy of the Act is attached as annexure **B.**
- 3- That during service the appellant was awarded several commendation certificates on the basis of excellent record of service.
- 4- That appellant while working in the Rescue 1122 Department the respondent No.3 served a show cause notice on the appellant in which it was alleged that the appellant have called a meeting of station co-ordinators, shift Incharge, lead fire Rescuers of District Peshawar and Mardan to instigate the staff against the Officers in general and the Department in particular. It was further alleged that the appellant have found in spreading false propaganda against the Department and the High authorities. Copy of the show cause notice is attached as annexure **C.**
- 5- That appellant in response to the said show cause Notice submitted his detailed reply and denied the allegations which have been leveled against him. Copy of the reply is attached as annexure **D.**
- 6- That it is very pertinent to mention that the appellant is leading the employees of rescue 1122 in the case title Ihsanullah and 688 others VS Govt: of KPK filed by the employees of Rescue 1122 against the Director General Rescue 1122 and others and due to that reason the concerned Director General Rescue 1122 imposed undue influence and pressurized the appellant and his other colleagues to withdraw the case against him. That appellant time and again requested and explained the scenario to the concerned D.G about his case but inspite of that the concerned D.G acted in arbitrary and malafide manner.
- 7- That due to personal grudges of the concerned Director General Rescue 1122 issued the impugned order dated 5.06.2015 through incompetent authority against the appellant due to which the appellant was dismissed from service without assigning any reason and clear justification in the said impugned order. Copy of the impugned order is attached as annexure **E.**
- 8- That appellant feeling aggrieved from the impugned order dated 5.6.2015 prefer Departmental appeal on 3.7.2015 but

no reply has been received so far. Copy of the Departmental appeal is attached as annexure F.

- 9- Hence the present service appeal inter alia on the following grounds.

GROUND:

- A- That the impugned order dated 5.06.2015 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondents 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 the appellant has been punished on no fault on his part, therefore the impugned order dated 5.6.2015 is not tenable in the eyes of law and liable to be set aside on this score alone.
- D- That the impugned order dated 5.6.2015 is the result of writ petitions NO.182-P/2015, 183-P/2015, 300-P/2015 and 301-P/2015 filed by the appellant and his colleagues against the Director General Rescue 1122 and due to that reason the respondent No.3 got against the appellant and imposed undue influence on the appellant and his other colleagues to withdraw the case against him. That appellant time and again requested and explained the scenario to the respondent No.3 about his case but inspite of that the respondent No.3 acted in arbitrary and malafide manner by issuing the impugned order dated 5.6.2015 against the appellant.
- E- That no charge sheet and statement of allegation has been served against the appellant by the respondents before issuing the impugned order dated 5.6.2015.
- F- That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 5.6.2015 by the respondent No.3.
- G- That no final Show cause notice has been served by the respondents on the appellant before issuing the impugned order dated 5.6.2015.
- H- That no regular inquiry has been conducted in the matter which as per Supreme Court judgments is necessary in punitive actions against the civil servant.

- I- That the impugned order dated 5.6.2015 has been issued by the Incompetent authority, therefore the impugned order dated 5.6.2015 is void ab initio in the eyes of law.
- J- That the issue against the appellant is planted one and is clearly based on malafide, therefore the action taken by the concern authority against the appellant in terms of impugned order dated 5.6.2015 is not tenable and liable to be set aside.
- K- That no fact finding inquiry has been conducted in the matter of appellant, therefore the entire proceedings which have been initiated against the appellant is void.
- L- That no law has been mentioned in the impugned order dated 5.6.2015 by the respondent No.3, therefore the impugned order is void ab initio on this score alone.

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

Dated: 29.10.2015

APPELLANT

Sajal

SAJAWAL KHAN

THROUGH:

N

**NOOR MOHAMMAD KHATTAK
ADVOCATE**

GOVERNMENT OF NWFP
PLANNING AND DEVELOPMENT DEPARTMENT
DIRECTORATE OF EMERGENCY RESCUE SERVICE (RESCUE 1122)
No. Rescue 1122/Rec/Pesh/2010 dated March 2010



A-5

Mr. Rajwal Khan S/O
Gul Haideen
17301-1518550-9

**CONDITIONAL SELECTION IN EMERGENCY RESCUE SERVICE, RESCUE 1122,
NWFP (PHASE II)**

It is to inform that you have been conditionally selected as SI in the Project "Development of Emergency Rescue Service, Rescue 1122, NWFP, (Phase II)", for the project period on contract/temporary basis, subject to following conditions:

- i. Clearance of your medical examination to be held at Police Hospital Peshawar.
- ii. Verification of your documents which include CNIC, academic/qualifications/experience certificates and Police verification, to be held under arrangement of the Rescue 1122, NWFP.
- iii. Executing an undertaking attached to this letter of selection affirming the terms and conditions of selection.
- iv. Successful completion of Basic Emergency Training of fourteen weeks at Emergency Service Academy, Lahore starting in March 2010, followed by Hospital Attachment at Peshawar. During this training period, you will be on probation. Your services shall be terminated in case you are not able to complete the training due to any reason. You will receive monthly salary as admissible/ appropriate to your basic pay scale as per the Project PC-1. After successful completion of training you will also be entitled to suitable monthly emergency incentive allowance with back arrears with effect from the issue date of this letter of selection.
- v. Documentary proof to the effect that your employer has duly relieved you of your job, if you are currently doing one in public or private sector. You are not allowed to do any part time job during service in the Project.

ATTESTED
Sajid

Khushal Khan

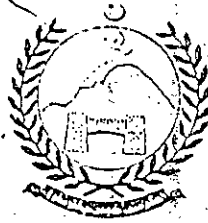
(Khushal Khan)
Director General

No. Rescue 1122/Rec/Pesh/2010 dated ¹⁵ March 2010
Copy to:

1. AG NWFP
2. Medical Superintendent, Police Hospital, Peshawar with a request to undertake medical examination of the abovementioned trainee.
3. Personal File

(Khushal Khan)
Director General

EXTRAORDINARY
GOVERNMENT



B-6
REGISTERED NO. PIII
GAZETTE

20-9-2012

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, THURSDAY, 20TH SEPTEMBER, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT,
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 20th September, 2012.

No. PA/Khyber Pakhtunkhwa/Bills/2012/6083.—The Khyber Pakhtunkhwa Emergency Rescue Service Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 7th September, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 17th September, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA EMERGENCY RESCUE SERVICE ACT, 2012

(KHYBER PAKHTUNKHWA ACT NO. XV OF 2012)

(first published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary), dated the 20th September, 2012).

AN
ACT

*to provide for the establishment of the
Khyber Pakhtunkhwa Emergency Rescue Service.*

Preamble.—WHEREAS it is expedient to establish an emergency rescue service for the purpose of maintaining a state of preparedness to deal with emergencies, to provide timely response, rescue and emergency medical treatment to the persons affected by emergencies and recommending measures to be taken by related organizations to avoid or combat emergencies;

It is hereby enacted as follows:-

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Emergency Rescue Service Act, 2012.

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(2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.---In this Act, unless there is anything repugnant to the subject or context,

- (a) "Board" means the District Emergency Board constituted under section 9;
- (b) "Council" means the Khyber Pakhtunkhwa Emergency Council constituted under section 5;
- (c) "Director" means a Director appointed under section 11;
- (d) "Director General" means the Director General appointed under section 10;
- (e) "district" means a district as notified by Government under the West Pakistan Land Revenue Act, 1967 (W.P. Act No. XVII of 1967);
- (f) "District Emergency Officer" means the District Emergency Officer appointed under section 13;
- (g) "emergency" means a serious and potentially dangerous situation requiring immediate remedial action such as an accident, hazardous material incident, fire, explosion, natural or manmade disaster and medical emergencies;
- (h) "emergency area" means the area affected by an emergency;
- (i) "Emergency Officer" means an Emergency Officer appointed under section 13;
- (j) "Fund" means the Emergency Rescue Service Fund established under section 16;
- (k) "Government" means the Government of the Khyber Pakhtunkhwa;
- (l) "non-governmental organization" includes any private agency or body working voluntarily for the welfare of the persons affected by an emergency;
- (m) "premises" includes land, place, building, vehicle, vessel or aircraft or any part of premises;
- (n) "prescribed" means prescribed by rules or regulations made under this Act;
- (o) "Provincial Assembly" means the Provincial Assembly of the Province;
- (p) "Province" means the Province of the Khyber Pakhtunkhwa;
- (q) "regulations" mean regulations made under this Act;

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- (f) "Rescuer" means a member of the Rescue 1122 appointed under section 14;
- (g) "Rescue 1122" means the Khyber Pakhtunkhwa Emergency Rescue Service 1122 established under section 3;
- (h) "Rescue Station" means a place where an office of the Rescue 1122 is established;
- (u) "rules" mean rules made under this Act;
- (v) "section" means a section of this Act; and
- (w) "Volunteer" means a person who is registered as such by the Rescue 1122 or engaged by a Rescuer in emergency area to assist the Rescue 1122 in the exercise of its functions under this Act.

3. Establishment of the Rescue 1122.—(1) As soon as after the commencement of this Act, Government shall establish an Emergency Rescue Service to be known as the Khyber Pakhtunkhwa Emergency Rescue Service hereinafter referred to as "Rescue 1122".

(2) The Rescue 1122 shall be a body corporate having perpetual succession and a common seal, with power to enter into contract, acquire, hold and dispose of property, and may by its name sue or be sued.

(3) The main office of the Rescue 1122 shall be at Peshawar. The Rescue 1122 shall have its district offices at such other places in the Province, as the Council may deem it proper.

(4) The Rescue 1122 shall have the authority to accept donations in the shape of land, vehicles equipments, fund and other such items which may facilitate the functioning of the Rescue 1122 and all such donations shall be used, maintained and disposed of by the Rescue 1122 in the manner as may be prescribed.

(5) All the employees of the Rescue 1122 shall be governed under the West Pakistan Essential Services (Maintenance) Act, 1958 (W.P. Act No. XXXIV of 1958) and rules or regulations made under this Act.

4. Aims and Objectives of the Rescue 1122.—The aims and objectives of the Rescue 1122 shall be to-

- (a) maintain a state of preparedness to deal with emergencies;
- (b) provide timely response, rescue and emergency medical (treatment to the victims of an emergency including medical and surgical emergencies);
- (c) establish a system for rapid communication, exchange of information and quick response to combat or deal with an emergency;
- (d) arrange for a universal toll free emergency dial-in-number as may be allocated by

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- (e) play a lead role and coordinate the working of other organizations or agencies which have lawful authority to respond to an emergency;
- (f) arrange transport where necessary for carrying persons requiring emergency medical treatment from the emergency area to the nearest hospital or health care unit having arrangements for emergency medical care and treatment;
- (g) establish community emergency response teams through enlistment, training, coordination and supervision of volunteers to assist the Rescue 1122 in safety promotion and management of emergencies;
- (h) impart training and grant certificates to rescuers, volunteers and other private persons for due performance of emergency management duties;
- (i) establish direct contact with local and international organizations and training institutions to maintain the Rescue 1122 according to international standards;
- (j) collect, compile, maintain and analyze emergency response data and statistics relating to emergencies and to use it for research and prevention of such emergencies;
- (k) implement the regulations framed by the Council for dealing with emergencies in accordance with the provisions of this Act;
- (l) suggest measures for the prevention or mitigation of hazards endangering public safety on roads, public parks and other public places particularly exhibitions, trade shows, amusement parks, and fairs with regard to public safety provisions;
- (m) encourage, facilitate, and train staff of non-governmental organizations and educational institutions for emergency management;
- (n) register and ensure minimum standards and code of conduct to be followed by rescue vehicles, ambulances and patient transportation services; and
- (o) coordinate and maintain an effective liaison with all other organizations managing emergencies.

5. Council.--There shall be a Council of the Rescue 1122 to be known as the Khyber Pakhtunkhwa Emergency Council consisting of the following:

- | | | |
|-----|---|----------|
| (a) | Chief Minister of the Khyber Pakhtunkhwa; | Chairman |
| (b) | Chief Secretary of the Khyber Pakhtunkhwa; | Member |
| (c) | four Members of the Provincial Assembly which shall include one female and one opposition member to be nominated by the Speaker of the Provincial Assembly; | Members |

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- (d) Secretary to Government, Home and Tribal Affairs Department; Member
- (e) Secretary to Government, Finance Department; Member
- (f) Secretary to Government, Health Department; Member
- (g) Secretary to Government, Local Government Department; Member
- (h) Secretary to Government, Transport Department; Member
- (i) Secretary to Government, Relief, Rehabilitation and Settlement Department; Member
- (j) Provincial Police Officer, Khyber Pakhtunkhwa; Member
- (k) Director General, Provincial Environmental Protection Agency; Member
- (l) two representatives (one each from the Government teaching hospitals and non-governmental organizations), to be nominated by Government, for a period of three years; and Members
- (m) Director General. Secretary.

6. Meetings of the Council.---(1) A meeting of the Council shall be called by the Chairman on such date and at such place as he may deem appropriate.

- (2) The quorum for the meeting of the Council shall be seven.
- (3) The Council shall meet at least once within three months.
- (4) The Council may co-opt or invite any person depending on the requirement of its meeting.

7. Powers and functions of the Council.---(1) Subject to the provisions of this Act and rules, the Council shall exercise such powers and perform such functions; as may be necessary for carrying out the purposes of this Act.

- (2) Without prejudice to the generality of the fore-going sub-section, the Council shall-

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- (a) lay down the policy and guidelines and issue directions for efficient, effective and expeditious actions in dealing with emergencies;
- (b) issue regulations to prescribe the minimum standards for the offices and staff to maintain efficiency and effectiveness of the Rescue 1122;
- (c) approve the annual management plan including the annual budget of the Rescue 1122;
- (d) make recommendations to Government for administrative, legal and financial measures required to sustain the Rescue 1122;
- (e) approve measures with regard to matters relating to the Federal Government, other Provinces and territories;
- (f) review and analyze statistics relation to all emergency incidents, accidents and disasters;
- (g) issue special directions to the Board; and
- (h) oversee the working of the Rescue 1122 and the training institutions.

8. Delegation of powers.--The Council may, by general or special order, delegate to the Chairman or a member of the Council or Director General any of its powers and functions under this Act subject to such conditions as it may deem fit.

9. District Emergency Board:--(1) As soon as after the commencement of this Act, the Council may by notification published in the official Gazette, constitute a District Emergency Board for a district for the prevention and effective management of emergency in the district.

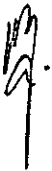
(2) The Board shall have such powers and shall perform such functions as may be assigned to it by the Council.

10. Director General:--(1) Government shall appoint a Director General, who shall be the Chief Executive Officer of the Rescue 1122 and shall exercise such powers and perform such functions as may be assigned to him by the Council.

(2) The Director General shall be a person who-

- (a) is a postgraduate in emergency management or an emergency subject or has specialization in management of trauma or emergency patients or is a medical postgraduate;
- (b) has adequate knowledge, formal training and expertise in the field of emergency management; and
- (c) is not more than sixty years of age.

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2014 → BPS-20

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(3) The Director General shall be appointed initially for a period of three years and shall be eligible for re-appointment for similar term on recommendation of the Council, keeping in view his performance and may remove him before the expiry of his tenure, if, he is not physically or mentally fit or is incapable of performing his duties.

(4) The Director General shall be responsible for the day to day administration of the affairs of the Rescue 1122.

(5) The Director General shall be paid such salary, allowances and other benefits and shall be subject to such terms and conditions of service as are laid down in his service contract.

(6) The Director General shall follow and comply with such directions of the Council as may be given to him in writing in the public interest.

(7) Subject to the approval of the Council, the Director General, may delegate any of his powers or functions to a Director or to an Officer of the Rescue 1122.

11. Directors, Deputy Directors and Assistant Directors.—(1) There shall be Directors, Deputy Directors and Assistant Directors of the Rescue 1122, who shall be appointed in such a manner as may be prescribed by regulations.

(2) A Director, Deputy Director and Assistant Director shall perform such functions as may be prescribed by regulations.

12. Officers, employees etc.—(1) To carry out the aims and objectives of the Rescue 1122, the Council may from time to time appoint consultants, experts, advisors and other officers and employees.

(2) All employees of the Rescue 1122 shall be liable to be assigned any emergency duty in accordance with the need of the time.

(3) The number and nature of the posts in the Rescue 1122, necessary criteria and the manner of appointment thereto shall be prescribed by regulations and the employees appointed to these posts shall receive such remuneration, allowances and privileges and shall be subject to such terms and conditions of service as may be prescribed by regulations.

(4) In the performance of their duties and functions, the employees of the Rescue 1122 and the volunteers shall abide by the directions and instructions of the Director General.

13. District Emergency Officer and Emergency Officer.—(1) There shall be a District Emergency Officer and such other Emergency Officers appointed by the Council to perform the field operations of the Rescue 1122.

(2) The District Emergency Officer shall be the head of the Rescue 1122 in the district and shall be assisted by all Emergency Officers and Rescuers in the district.

(3) No person shall be appointed as an District Emergency Officer unless, he-

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- (a) is a medical graduate preferably a post-graduate or having Master's Degree in Disaster Management or Emergency Management or public health;
 - (b) has at least five years working in relevant field preferably in emergency management; and
 - (c) is physical and mentally fit to perform field operators.
- (i) No person, shall be appointed as an Emergency Officer unless he-
- (a) is a medical graduate or post-graduate in a related science subject or has a professional related subject;
 - (b) has at least two years working in emergency management; and
 - (c) is physically and mentally fit to perform field operations.

14. Rescuer.---(1) There shall be Rescuers appointed by the Council on such terms and conditions as may be prescribed, to perform the field operations of the Rescue 1122.

(2) No person, shall be appointed as a Rescuer who-

- (a) is more than forty five years of age; and
- (b) has not cleared the educational and fitness criteria specified by the Rescue 1122.

(3) A Rescuer shall perform such field duties and functions, as are assigned to him by the Council.

(4) A Rescuer shall be liable to be retired on attaining the age of fifty years, if he cannot be adjusted on any other post in the Rescue 1122.

(5) Where a Rescuer is retired under sub-section (4), he shall be entitled to such benefits as may be prescribed by the Council.

15. Emergency Service Academy.---(1) As soon as after the commencement of this Act, Government shall establish an Academy to be known as the Khyber Pakhtunkhwa Emergency Service Academy for the purposes of running short or long courses with local or international collaboration and award certificates to successful persons.

(2) The Emergency Service Academy may also arrange for the training of the members of the Rescue 1122, volunteers and other individuals or workers of organization, public or private, to be equipped with the knowledge of dealing with all possible situations relating to prevention and management of emergencies.

16. Fund.---(1) There shall be established a Fund to be known as the Emergency Rescue Service Fund which shall consist of

- (a) grant-in-aid provided by the Federal Government and Government for the establishment, maintenance and performance of the Rescue 1122; and

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- (b) the donations or contributions received or generated from private persons or public, local, foreign or international organizations.
- (2) The Fund shall be maintained in a scheduled bank and shall be operated in accordance with directions of the Council.
- (3) The Fund shall be regularly monitored by the Council and audited in the same manner as in the case of the funds of other Government Departments.
- (4) The annual audit report of the Fund shall be made available to the general public and submitted to the Provincial Assembly.
- (5) No person from the Rescue 1122 shall organize, conduct or take part in any proceedings for collecting or soliciting money or property from the public except the person authorized by the Council and in accordance with such conditions as may be laid down by the Council.

17. Act-in-aid of the Rescue 1122.---(1) Every member of the police force of the Province and all members of other organizations shall act-in-aid of the Rescue 1122.

(2) The police acting-in-aid of the Rescue 1122 shall, control and divert the traffic in or around an emergency area to facilitate and ensure free movement of emergency rescue vehicles and the persons dealing with an emergency and to prevent within the emergency area any theft, damage or loss of the property of the persons involved in the emergency.

(3) It shall be obligatory upon all telecommunication operators, companies, corporations or other authorities concerned to provide free of cost access to its subscribers to avail the universal emergency dial-in-number as notified by the Rescue 1122, without any prefix or suffix for the whole of the Province.

18. Powers to manage emergencies.---(1) An Emergency Officer or a Rescuer, in providing emergency services, may take any reasonable measures to protect-

- (a) persons from any danger or potential danger associated with an emergency situation;
- (b) persons trapped in a vehicle, receptacle, vessel or otherwise endangered; and
- (c) themselves or other persons or vehicles from danger, potential danger, assault or battery from other person.

(2) Without limiting the measures that may be taken for a purpose specified in clause (a) or clause (b) of sub-section (1), an Emergency Officer or a Rescuer may, for that purpose-

- (a) enter any premises, vehicle or vessel;
- (b) open any receptacle, using such force as is reasonably necessary;
- (c) bring any apparatus or equipment into a premises;
- (d) remove from or otherwise deal with, any article or material in the area;

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- (e) remove (wholly or partially) or damage any premises, vehicle, vessel or receptacle;
- (f) cause the gas or electricity supply or motor or any other source of energy to any premises, vehicle, vessel or receptacle to be shut off or disconnected;
- (g) request any person or organization to take all reasonable measures to assist the Rescue 1122; and
- (h) administer such life safety procedures as are consistent with the training and competency of the Emergency Officer or Rescuer.

(3) Without limiting the measures that may be taken for a purpose specified in clause (c) of sub-section (1), a Rescuer or an officer authorized by the Council may, for that purpose, require any person not to enter into or remain within the emergency area and may use any appropriate public place for emergency warning and refuge centre or for purposes of community awareness.

(4) No person shall refuse to comply with the directions of the Rescuer or the person specified in sub-section (2), and if a person or organization does not comply with such directions, the Rescuer or the aforesaid officer may use such force as is reasonably necessary to ensure compliance.

19. Obstruction or hindrance.---No person shall willfully obstruct or hinder the Director General, Director, Deputy Director, District Emergency Officer, Emergency Officer, Rescuer, or any other person acting with his authority, in the exercise of a function under this Act

20. Immunity against certain liabilities.---(1) An act or omission committed by an employee of the Rescue 1122, or a volunteer, shall not, if committed in good faith for the purpose of exercising the functions of or assisting the Rescue 1122, subject such employee or volunteer personally to any legal action, liability, claim or demand.

(2) All actions, proceedings and claims against any such employee or a volunteer in relation to any act done or omitted to be done in good faith, shall be defended and indemnified by the Rescue 1122.

(3) Subject to the rules, any information received by the Rescue 1122 shall be deemed to be the privileged communication between the informer and the Rescue 1122:

Provided that the Director General may, in a special case and by order in writing, waive such privilege.

21. Life insurance.---All employees of the Rescue 1122 shall contribute to the salary saving life insurance scheme and compensation in case of injury or death in the line of duty shall be provided by the Rescue 1122 to such extent as may be prescribed by the Council.

22. Public servants.---All employees of the Rescue 1122 shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

23. Regularization of certain employees.---(1) Notwithstanding anything contained in any law or rules, all employees of the erstwhile development project titled "Emergency Rescue Service (Rescue 1122)", who are holding various posts with all its perks and privileges in the said project till the commencement of this Act, shall be deemed to have been validly appointed to those posts on regular basis on the commencement of this Act, having the same qualification and experience for the said posts.

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(2) The seniority of the employees of the said project shall be determined in the prescribed manner.

24. Emergency ambulance and rescue vehicles.---(1) No person shall use any vehicle as an emergency ambulance or rescue vehicle, unless it satisfies such requirements as are laid down by the Rescue 1122.

(2) Where a vehicle does not fulfill the requirements laid down by the Rescue 1122, but is used as a patient transport vehicle, it shall not use any siren or a warning light other than a round yellow warning light.

(3) No person, other than that belonging to a law enforcing agency, shall use red, blue or orange light or any siren on his vehicle except where the vehicle satisfies the requirements prescribed for an emergency ambulance or vehicle.

(4) No person shall-

- (a) use the words "Rescue" or "Rescue 1122" or any other similar name, title or description without the written authority of the Director General;
- (b) falsely represent that he is associated with the Rescue 1122 unless such an association exists;
- (c) impersonate as an officer of the Rescue 1122; or
- (d) use any insignia of the Rescue 1122 in any manner contrary to that approved by the Director General.

25. Right of way to emergency rescue vehicles and ambulances.---A driver of a vehicle or a member of the public or traffic police, to the extent practicable, shall make all possible efforts to give clear and uninterrupted passage to-

- (a) an emergency rescue vehicle or an ambulance with activated warning devices, siren or warning lights and duly registered with the Rescue 1122; and
- (b) an emergency officer or a rescuer or any person acting under their direction, who appears to be doing any act for the purposes of this Act.

26. False or obnoxious calls.---No person shall make a false or an obnoxious call on the emergency dial-in-number or in any other manner try to falsely represent that emergency circumstance exists requiring utilization of any resources of the Rescue 1122.

27. Offences and punishments.---(1) Any person who willfully or without any reasonable excuse, disobeys or violates any provision of this Act, shall be deemed to have committed a bailable offence punishable with simple imprisonment for six months or with fine not exceeding rupees fifty thousand or with both.

(2) No prosecution under this Act shall be lodged without the previous sanction of the Director General which shall not be given except after serving a notice on the person concerned and giving him reasonable opportunity of being heard.

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- (3) No Court inferior to that of a Magistrate of the First Class shall try an offence under this Act.
28. Power to make rules.---Government may make rules for carrying out the purposes of this Act.
29. Power to make regulations.---Subject to the provisions of this Act and the rules, the Council may make regulations, as may be necessary for carrying out the purposes of this Act.
30. Procurement In case of Acquisition of Emergency related goods and services.---The Council may make regulations for procurement of oversight the public procurement framework in case of acquisition of emergency related goods and services.
31. Act not in derogation of other laws.---This Act is not in derogation of any other law applicable in the Province and does not absolve any other person from his responsibility to take necessary measures to protect and save the lives and properties of a person in an emergency.
32. Repeal.-- The Khyber Pakhtunkhwa Emergency Rescue Service Ordinance, 2012 (Khyber Pakhtunkhwa Ordinance No. IV of 2012) is hereby repealed.

BY ORDER OF MR. SPEAKER

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary

Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager,
Staty. & Ptg. Dept., Khyber Pakhtunkhwa, Peshawar

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DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122),
GOVERNMENT OF KHYBER PAKHTUNKHWA
091-9222488 Fax: 091-9222487



DIRECTOR GENERAL


C-18
D/Nov
0-065
No. 2/Disipline/DA-1122/Estt. 361-62 Peshawar, dt. 10/04/2015

To: ✓
Mr. Sajawal Khan,
Shift Incharge ERS (Rescue-1122)
District Peshawar.

Subject: SHOW CAUSE NOTICE

I am directed to state that your reply of explanation dated 19.03.2015 is unsatisfactory and to enclose herewith a copy of Show cause notice to be responded with in three (03) days of issuance of this letter.

This show cause notice issued as per E & D Rules 2011, for your final written explanation.


ADMIN OFFICER
Emergency Rescue Service (Rescue-1122)
Khyber Pakhtunkhwa

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DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122),
GOVERNMENT OF KHYBER PAKHTUNKHWA
091-9222488 Fax: 091-9222487



19

DIRECTOR GENERAL

No. 1-2/Discipline/DA-1122/Inst: Peshawar: 01/04/2015

SHOW CAUSE NOTICE

I Dr. Asad Ali Khan Director General Khyber Pakhtunkhwa Emergency Rescue Service (Rescue-1122) as competent authority under E & D Rules 2011, do hereby serve you Mr. Sajawal Khan, Shift Incharge ERS (Rescue-1122) District Peshawar as follows;

1. It has been reported that on 14.03.2015, you with your ulterior intentions called a meeting of Station Coordinators, Shift Incharges, Lead Fire Rescuers of District Peshawar and Mardan to instigate the staff against the officers in general and the Department in particular.
2. Furthermore you have also violated clause (vi) of the affidavit which you have signed at the time of appointment wherein you agreed not to indulge in any undesirable activities like ganging up or acts involving moral turpitude.
3. In addition to the above charges, you have also been found in spreading false propaganda against the department and the high authorities. To achieve this objective of yours, you have been found by forging fake signature of Rescuers while forwarding false and baseless allegations to different quarters.
4. You are therefore charged for following allegations:
 - i. Misconduct under Section 2(L) (i) (ii) (iii) (iv) (v) & Section 3 (b) (e) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) rules, 2011.
 - ii. Action beyond your authority by convening the meeting and maligning the image of the institution and the respected officers of the department without any proof by provoking the staff against the department and institution constitutes misconduct on your part. You are hereby required to give written explanation within three days of the notice as to why disciplinary action should not be taken against you.
5. In case written reply to this notice is not received within time specified above, ex-parte proceedings will be initiated against you.

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(DIRECTOR GENERAL)

Emergency Rescue Service (Rescue 1122),
Khyber Pakhtunkhwa, Peshawar.

To

The Director General
Emergency Rescue Service, Rescue- 1122,
KhyberPakhtunkhwa, Peshawar.

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Subject: REPLY OF SHOW CAUSE NOTICE.

Respected sir,

In compliance of show cause notice NO.1&2/Discipline/DA-1122/ESst: 361-62
Peshawar 01/04/2015, I submit as under.

I was asked to explain (A) to instigate the staff against the officers in general and the department in the particular (b) to violate Claus (vi) of affidavit not to indulge in any undesirable activities like ganging up or acts involving moral turpitude (c) Spreading false propaganda against the department & High authority by taking forge signature of Rescuer accordingly, I was charged under section 2(L) i to V & section 3 of KPK but servant (Efficiency and Discipline) Rules -2011 on misconduct. I plead not guilty; I did not commit any offence under section 2(L) I to v & section 3(b)(L) KPK Govt servant (efficiency & Discipline) Rules -2011 if so Specific offence, How what & when committed by me have been given in show cause above but nothing given so.

On 14 March 2015, a cut of our colleagues was held (but neither during office Hours nor within the premises of Rescue -1122 only few how to achieve Ours fundamental & legal Rights and to know the progress of the writ No.182-P/2015 in Honorable Peshawar High court Peshawar and more than that as such all the allegation above are beaucroitic tactics & Autocracy.

Sir,

Our activities are only for rules of law to eradicate social evils such as corruption nepotism above & arbitrary attitude etc under article No 17 & 37 constitution and we are affirmed clause (VI) of the affidavit on 14 March 2015.

I reserve our right to move contempt of court petition.

Sir,

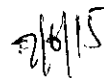
I assure yours good self that I am would be law bending sub ordinate and will never leave any stone unturned to fulfill my duties etc.

Dated 07/05/2015

Yours Obedient subordinate

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FROM: RESCUE 1122 HQ

FRX NO. 0062 91 5222487

05 Jun. 2015 08:29AM P2



DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122),
GOVERNMENT OF KHYBER PAKHTUNKHWA



DIRECTOR GENERAL

No.1-1/DG-1122/Estt/9745-51

Peshawar: 5-6-2015

ORDER

Consequent upon your unsatisfactory replies to the explanation issued vide No.1-26/General/DA-1122/Estt: 1341-15 dated 18-3-2015 and show cause notice vide No.1-2/Discipline/DA-1122/Estt: 361-62 dated 1-4-2015 followed by Departmental Enquiry, the Competent Authority after affording an opportunity of personal hearing twice, you did not bother to appear in person, therefore the competent authority has decided in the light of material on record to impose major penalty of dismissal from service on Mr. Sajawal Khan s/o Gul Haideen (Shift Incharge - BPS-11, ERS Rescue 1122) with immediate effect.

--SD--

(DIRECTOR GENERAL)

Emergency Rescue Service Rescue (1122)
Khyber Pakhtunkhwa

Copy to:-

1. Accountant General, Khyber Pakhtunkhwa.
2. District Emergency Officer, ERS (Rescue-1122), Peshawar/Mardan.
3. PS to Secretary Relief Rehabilitation & Settlement Department, Khyber Pakhtunkhwa.
4. Accountant, ERS (Rescue-1122) Peshawar/Mardan.
5. PA to Director General, ERS (Rescue 1122), Khyber Pakhtunkhwa.
6. Mr. Sajawal, Ex-Shift Incharge, ERS (Rescue 1122), Khyber Pakhtunkhwa.
7. Personnel File.

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Sajawal

(ADMINISTRATIVE OFFICER)

Emergency Rescue Service Rescue (1122)
Khyber Pakhtunkhwa

F-(29)

To

The Honorable Secretary Relief & Rehabilitation Department
KPK, Peshawar.

Subject:

DEPARTMENT APPEAL AGAINST THE IMPUGNED DISMISSAL ORDER NO. 2745-51 DATED 05/06/2015 WHEREBY A MAJOR PENALTY OF DISMISSAL (DEATH SENTENCE OF SERVICE) FROM SERVICE WAS AWARDED TO THE APPELLANT WITHOUT ANY REASON AND PROCESSING WITHOUT "DUE COURSE OF LAW"

Respectfully sheweth Sir,

Since my appointment as shift incharge BPS-12 in 2010 in Rescue 1122 KPK Peshawar. My services were spotless, meritorious & commended time & again till Jan, 2015. When I wished to achieve my fundamental & constitutional rights and to promote honesty, loyalty with beloved state of Pakistan & as well as to eradicate evils "viz, corruption, nepotism etc. through legal & constitutional way by moving a Departmental appeal dated 05-01-2015 for redressal of the grievances but of no avail as yet, accordingly, a writ petition no. 182-P/2015 in august Peshawar high court Peshawar in Jan, 2015 which irritated the worthy DG, Respectable Directors Admin & operation & their allies Rescue-1122 Head Quarter KPK Peshawar.

While serving in the Rescue-1122 I (appellant) was served Explanation No. 1341-45 Dated 18/03/2015 subsequent by show cause No. 361-62 Dated 01/04/2015 wherein I was alleged as under:

- 1) It has been reported that on 14/03/2015, you with your ulterior intention called a meeting of "Station Coordinators, Shift incharges & Lead Fire Rescuers" of District Peshawar & District Mardan to instigate the staff against the officers in general and Department in particular.
- 2) Furthermore, you have also violated clause (vi) of the affidavit which you have signed at the time of appointment wherein you agreed not to indulge in any undesirable activities like ganging up or acts involving moral turpitude.
- 3) In addition to the above charges, you have also been found in spreading false propaganda against the Department & high authorities to achieve this objective of yours, you have been found by forging fake signature of rescuers while forwarding false and baseless allegation to different quarters. You are, therefore, charged for misconduct under section 2 (l)(i)(ii)(iii)(iv)(v) & section 3 (b)(e) of KPK, Gov't Servant (E&D) Rules of KPK Civil Servant Act 1973.

ATTESTED
[Signature]

PS to Secretary RR&SD
Diary No 1177
Dated 3.11.15

These all charges were categorically & cogently refuted timely but of no avail because personal grudges and enmity stood in way of justice & impartiality.

In accordance with section 22 KPK Rescue Act (xv) of 2012 "All Employees of the Rescue-1122 shall be deemed to be public servants" within the meaning of Section 21 of the PPC 1860 (Act no. XLV of 1860) & not civil servants under KPK civil servants Act 1973, therefore, in the absence of statutory rules & regulations. Imposing the civil servant Act against the appellant is void ab-initio, hence, sentence of dismissal imposed is illegal and out of Law.

Under the "due process of Law" all charges cited above must have been thoroughly investigated and tried by credible impartial authority under Law for their correctness or otherwise, but, all the process against the appellant is arbitrary, abusing absolute power on bases of personal grudges & enmity which is crystal clear in charge no. 3 cited above under Law of justice & natural justice as well offender is punished not innocent. Being quite innocent the appellate was awarded service death sentence "Dismissal" without any proof.

Sir,

I am prepare to prove my innocence at any corner and guilt of worthy DG & respectable directors and their allies before any impartial credible investigation or inquiry board if is deemed necessary.

It is, therefore, most humbly prayed that on acceptance of this departmental appeal the impugned dismissal order No. 2745-51 dated 05/06/2015 may very kindly be set aside and appellant be re-instated with all benefits & rights. Any other relief yours good self deems fit may very kindly be imparted.

Thanking in anticipation.

Dated: 02/07/2015

yours obedient appellant,

Sajal 03/07/15

SAJAWAL KHAN, Shift incharge (BPS-12),

ERS-Rescue-1122, Peshawar KPK.

ATTESTED

Sajal

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2015

Sajawal Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt. of KPK

(RESPONDENT)
(DEFENDANT)

I/We Sajawal 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. ___/___/2015

Sajawal

CLIENT

N

ACCEPTED

**NOOR MOHAMMAD KHATTAK
(ADVOCATE)**

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

In Re: A.P. No. 1226-P / 2015.

Mr. Sajawal Khan, Shift In charge (BPS-12),
O/o ERS 1122, Station No. 66 Sherpaw, Khyber Pakhtunkhwa, Peshawar
.....Appellant.

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa, Peshawar & 3 Others
.....Respondents.

WAKALATNAMA /POWER OF ATTORNEY

KNOW all to whom these shall come that I/We the undersigned appoint **Asad Jan Durrani**
Advocate High court of Pakistan to be an advocate for **RESPONDENT No 3 & 4** in the
above mentioned case to do all following acts, deeds and things or any of these that is to say.

1. To act, appear and plead in the above mentioned case in this court or any other court in which
the same may be tried or heard in the first instance or in appeal or in revision or execution or in
any other stage of its progress until its final decision.
2. To present pleadings, appeals, cross objections for execution review, revision, withdrawal,
compromise or other petitions or affidavits or other documents as shall be deemed necessary or
advisable for the prosecution/ defense of the said cause at all its stages.
3. To withdraw or compromise the said case or submit to arbitration any differences or disputes
that shall arise touching or in any manner to the said case.
4. To receive and grant receipts therefore to do all other acts & things which may be necessary to
be done for the progress in the course of prosecution/defense of cause.
5. To employ, authorize any other legal practitioner to assist or exercise the power and authority
hereby conferred on the advocate whenever he may think to do so.

AND I/ WE agree to ratify whatever the advocate or his substitute shall do in this behalf **AND**
I /WE hereby agree not to hold the advocate or his substitute responsible for the result of the said
case consequences of his absence from the court when the said case is called up for hearing.

AND I / WE hereby agree that in the event of the whole or any part of the fee agreed
by me /us to be paid to the advocate remaining unpaid, he shall be entitled to
withdraw from the prosecution / defense of the said case until the same is paid.

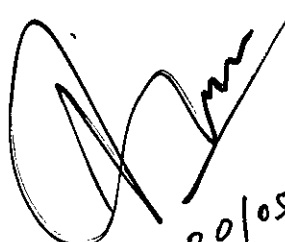
WHEREFOR I/ WE here under set my / our hands to these presents the contents
of which have been explained to and understood by me/us.

Dated.

Accepted subject to the above terms & payment of settled fee.

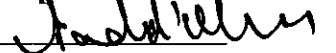
Asad Jan Durrani

Advocate High Court of Pakistan



Dated 30/05/2016

Signature/ Thumb Impression of Client.

Respondent No.3


Director General Rescue 1122,
Khyber Pakhtunkhwa

Respondent No.4


Administrative Officer Rescue 1122,
Khyber Pakhtunkhwa

Subject: PRELIMINARY INQUIRY/ INVESTIGATIONS INTO ISSUES OF
INDISCIPLINE IN RESCUE 1122 KHYBER PAKHTUNKHWA

The Director General Rescue 1122 Khyber Pakhtunkhwa has drawn attention of the Secretary Relief, Rehabilitation & Settlement Department towards the prevailing indiscipline and inefficiency among the ranks of employees of the said organization, through a note vide (Annex-I).

The Director General Rescue 1122 has listed a number of reasons for the reported state of affairs which are described below.

1. Due to the "Sifarish" culture the employees have been performing their duties in three shifts i.e two of 6 hours and one of 12 hours.

2. Out of 13 Rescue stations in district Peshawar and Mardan some of the stations were having only one or two Emergency calls during the entire shift which seems to be inefficiency of the rescuers.

3. Whenever a disciplinary action is taken against any employee, all the employees gang up against the authorities and launch smear campaign against the high ups.

4. Of late there has been a group of 13 or 14 rescuers who have been moving around in various rescue stations for raising fund for filing writ petition against the Government and forcing it through the courts for getting financial benefits such as 50% Adhoc Relief Allowance and pay package at par with Provincial Disaster Management Authority. Such an act on the part of the said group is likely to result in breakdown of discipline in this uniformed force.

5. Whenever a disciplinary action is taken against any one of the employees a plethora of baseless complaints starts pouring in. The group of employees involved in this nefarious game forges signatures of other colleagues without their knowledge or information and portray as if the complaints are being made by all the rescuers.

6. Khyber Pakhtunkhwa Emergency Rescue Service (Rescue 1122) Act clearly elaborates that the staff of Rescue 1122 is governed by the West Pakistan Essential Services maintenance Act and they are also governed by the Khyber Pakhtunkhwa E&D Rules 2011. Moreover all the rescuers have given an undertaking before joining the Rescue 1122 service to the effect that their services may be terminated on their any act of ganging up against the officers of the organization.

In the same context the Director General Rescue 1122 has submitted proposal for initiating disciplinary action against the following employees of Rescue 1122 vide (**Annex-II**).

S.No	Name	Designation	District
1	Mr. Wakeel Shah	Station Co-ordinator	Peshawar
2	Mr. Bakhtawan	Station Co-ordinator	Peshawar
3	Mr. Sajawal Khan	Shift Incharge	Peshawar
4	Mr. Riaz Khattak	Shift Incharge	Peshawar
5	Mr. Tariq Hayat	Lead Fire Rescure	Peshawar
6	Mr. Mushtaq	Shift Incharge	Mardan
7	Mr. Junaid Shah	Shift Incharge	Mardan
8	Mr. Junaid	Lead Fire Rescure	Mardan
9	Mr. Sher Wali	Lead Fire Rescure	Mardan
10	Mr. Arshad	Lead Fire Rescure	Mardan

Keeping in view the proposal of the DG Rescue 1122, the Secretary RR&S Department constituted an Inquiry Committee consisting of the following officers to enquire/ investigate into the matter and submit report (**Annex-III**).

- | | | |
|-----|---|----------|
| i) | Mr. Shafirullah
Director Civil Defence, Peshawar | Chairman |
| ii) | Mr. Muhammad Ayub Khan
Deputy Secretary, RR&S Department | Member |

Procedure for conducting enquiry

The employees listed above were called on 8-04-2015, 9-04-2015 and 17.04.2015 respectively. They were questioned and their statements recorded which are added as (**Annex-IV**). Besides many others were also heard to ascertain the factual position but they were not ready for written statement due to fear of the ring leaders.

Statement of Dr. Muhammad Ayaz, Director (Operation) and Adil Shah, Station House Incharge were recorded and placed on file vide (**Annex-V & VI**).

Some of the officials stated that Ihsanullah, Shift Incharge and Sajawal Khan, Shift Incharge have collected the contribution. Many others also stated that Ihsanullah, Sajawal Khan & Riaz Khattak besides others mentioned in the report were leading the rescuers & organizing the gathering but were not ready to give statement in writing.

Some pictures of the gathering of 14/03/2015 were also produced which shows that Sajawal Khan & Ihsanullah are the hosts of the gathering.

After going through record and facts of the case including personal hearing given to the accused official, the enquiry committee has reached the following conclusion.

Findings of the Inquiry Committee

1. M/S Ihsanullah, Shift Incharge, Sajawal Khan, Shift Incharge are the persons who organized, managed the gathering for binding the whole staff to take any step collectively against the organization. They also collected the contribution in case to complete their course of action. This falls in the ambit of Para 1(VI) of the undertaking furnished by them at the time of joining their service.
2. The remaining 8/9 rescuers mentioned in the report of Dr. Ayaz on file are second line leaders in case of any action against the above two official.
3. By virtue of act mentioned in finding at S.No.1 & 2 they have actually violated the under-taking (In official language contract agreement) with the organization at the time of joining the service. Specifically terms/ conditions mentioned in Para (IV), (V) & (VI) which entails for action under Para 2 of the undertaking.

Conclusion

According to section 3 (5) of Khyber Pakhtunkhwa Emergency Rescue Service Act 2012. "All the employees of the Rescue 1122 shall be governed under the West Pakistan. Essential service (Maintenance) Act, 1958 and rules or regulation made under this Act" therefore they may be proceeded as per Law.

Shafirullah
(Chairman)
Inquiry Committee

Muhammad Ayub Khan
Deputy Secretary
Relief Rehabilitation & Settlement Department
Member of the Inquiry committee

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1226/2014

SAJAWAL KHAN

VS

GOVT: OF KPK

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

PRELIMINARY OBJECTIONS:

(1 TO 7):

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the case.

ON FACTS:

(1 TO 9):

- 1- Admitted correct. That appellant was served in the respondent Department for more than 5 years and during service there is no complaint has been received against the appellant. That from the 1st appointment appellant served in the respondent Department quite efficiently and up to the entire satisfaction of his superiors.
- 2- Incorrect and not replied accordingly. That appellant explain actual position in para 2 of the appeal which needs no evidence.
- 3- Incorrect and not replied accordingly. That appellant explain actual position in para 2 of the appeal which needs no evidence.
- 4- Incorrect and replied accordingly. That appellant and his other colleagues filed writ petition No. 182-P/2015 for introducing service structure and Writ No. 183/2015 for allowance. That due that reason the respondent Department pressurized the appellant and his other colleagues for withdrawal the above mentioned writ petition and during this period one employee namely Bakht Rawan was dismissed from service, and due that reason the employees of the respondent Department called strike for re-instatement of the said Mr. Bakht Rawan. That appellant was not involve any illegal activities and illegal meetings/demonstration against the Department, but appellant has been badly suffered by the respondent Department.

- 5- Incorrect and not replied accordingly. That the respondent Department issued a show cause notice in response of the said show cause notice appellant filed detailed reply and denied all the allegations which has been leveled against him. That the attached pictures are not the evident of illegal meeting. That the said pictures were captured during lunch party in respect of our shift Incharge son's birth.
- 6- Incorrect and not replied accordingly. That appellant was leading the employees of rescue 1122 in the case title Ihsan Ullah & 688 others VS Govt: of KPK filed by the employees of Rescue 1122 and others and due to that reason the concerned Director General Rescue 1122 imposed undue influence and pressurized the appellant and his other colleagues to withdraw the case against him. That the dismissal order of the appellant is the result of the above mentioned writ petition.
- 7- Incorrect and not replied accordingly. That due to personal grudges of the concerned Director General Rescue 1122 issued the impugned Dismissal order dated 05.06.2015 through incompetent authority against the appellant.
- 8- Incorrect and not replied accordingly. That appellant has preferred his Departmental appeal which has been properly registered as diary No. 1176 vide dated 03.07.2015.

GROUND:
(A TO H):

All the grounds of main writ petition of the petitioner are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless. That the appellant has been punished on no fault on his part, therefore the impugned order dated 5.6.2015 is not tenable in the eyes of law and liable to be set aside on this score alone. That the impugned order dated 5.6.2015 is the result of writ petitions NO.182-P/2015, 183-P/2015, 300-P/2015 and 301-P/2015 filed by the appellant and his colleagues against the Director General Rescue 1122 and due to that reason the respondent No.3 got against the appellant and imposed undue influence on the appellant and his other colleagues to withdraw the case against him. That appellant time and again requested and explained the scenario to the respondent No.3 about his case but inspite of that the respondent No.3 acted in arbitrary and malafide manner by issuing the impugned order dated 5.6.2015 against the appellant. That no charge sheet and statement of allegation has been served against the appellant by the respondents before issuing the impugned order dated 5.6.2015. That no chance of personal hearing/defense has been given to the

appellant before issuing the impugned order dated 5.6.2015 by the respondent No.3. That no final Show cause notice has been served by the respondents on the appellant before issuing the impugned order dated 5.6.2015. That no regular inquiry has been conducted in the matter which as per Supreme Court judgments is necessary in punitive actions against the civil servant. That the impugned order dated 5.6.2015 has been issued by the Incompetent authority, therefore the impugned order dated 5.6.2015 is void ab initio in the eyes of law. That the issue against the appellant is planted one and is clearly based on malafide, therefore the action taken by the concern authority against the appellant in terms of impugned order dated 5.6.2015 is not tenable and liable to be set aside. That no fact finding inquiry has been conducted in the matter of appellant, therefore the entire proceedings which have been initiated against the appellant is void. That no law has been mentioned in the impugned order dated 5.6.2015 by the respondent No.3, therefore the impugned order is void ab initio on this score alone.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be accepted in favor of the appellant.

APPELLANT

Sajawal

SAJAWAL KHAN

THROUGH:

Noor
**NOOR MOHAMMAD KHATTAK
ADVOCATE**

Before the Service Tribunal KP, Peshawar.

Ahsan vs Rescue 1122

Application for Setting-aside
Exparte Proceedings.

Respectfully Sheweth

- (1) That the instant case is/was fixed before this Hon'ble Tribunal for today i.e 27-06-2018.
- (2) That the instant case was fixed for arguments for today and the counsel for the Respondent No 3 and 4 was busy before the Hon'ble High Court Peshawar in a case titled as "Nabeel Ahmad vs Govt of KP" and after becoming free from Hon'ble High Court Peshawar rushed to this Hon'ble Service Tribunal around 11:30 am but was informed in the Tribunal the Respondent No 3 and 4 has been proceeded Exparte by this Hon'ble Tribunal.
- (3) That it is pertinent to mention here that the available Rights of the Govt Department are attached with the instant case.
- (4) That the application is well in time and even after 15 minutes of passing Exparte Proceedings Order on the same day i.e 27-06-2018.

It is therefore, very humbly prayed on the acceptance of this application that the Exparte Proceedings may kindly be set-aside.

Affidavit
The contents of this application are true and correct to the best of my knowledge and belief.

27 JUN 2018

ATTESTED



Applicant/Respondent
No 3 & 4

ASAD TAN DUREANI
Advocate
High Court.

DAILY LIST FOR WEDNESDAY, 27 JUNE, 2018

BEFORE:-

MR. JUSTICE WAQAR AHMAD SETH &
MR. JUSTICE MUHAMMAD NASIR MAHFOOZ

Court No: 2

MOTION CASES

- | | | |
|--|---|---|
| 41. W.P 2737/2018
with i/r() | Mst. Badshahiroon
V/s
Govt of KPK | Zartaj Anwar Khan

AG KPK |
| 42. W.P 2979/2018
With IR() | Muhammad Shoaib
V/s (Date By Court)
Govt of KPK | Amjad Ali Mardan

AG KPK |
| 43. W.P 3038/2018
with i/r() | Nabeel Ahmad
V/s
Govt of KPK | Asad Jan Durrani

AG KPK |

NOTICE CASES

DAILY LIST FOR WEDNESDAY, 27 JUNE, 2018

BEFORE:-

MR. JUSTICE WAQAR AHMAD SETH &
MR. JUSTICE MUHAMMAD NASIR MAHFOOZ

Court No: 2

MOTION CASES41. **W.P 2737/2018**
with i/r()**Mst. Badshahiroon**
V/s
Govt of KPK**Zartaj Anwar Khan**

AG KPK42. **W.P 2979/2018**
With IR()**Muhammad Shoaib**
V/s (Date By Court)
Govt of KPK**Amjad Ali Mardan**

AG KPK43. **W.P 3038/2018**
with i/r()**Nabeel Ahmad**
V/s
Govt of KPK**Asad Jan Durrani**

AG KPKNOTICE CASES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re:

APPEAL NO: 1226 / 2015.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 902

Dated 25-8-16

Sajawal Khan, Shift Incharge (B.P.S.12),
Emergency Rescue Service 1122,
Khyber Pakhtunkhwa, Peshawar.....Appellant.

Vs

The Government of Khyber Pakhtunkhwa through Chief
Secretary Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

**APPLICATION FOR & ON BEHALF OF RESPONDENTS 2,3
FOR SETTING ASIDE THE ORDER DATED.28.07.2016.**

Respectfully Sheweeth:

1. That the Appeal of the appellant is pending before this Honourable Tribunal and is fixed on 23.11.2016 before D.B of this Tribunal.
2. That on 30.05.2016, this Honourable Tribunal imposed a cost of Rs.500/- on the Applicants/Respondents for not filling of Written Reply despite last opportunity.
3. That on 28.07.2016, a single Honourable Member of this Tribunal struck off the right of defense of the Applicants/Respondents as no further opportunity was provided for filling of the Written Reply. The Appeal is now fixed on 23.11.2016 before D.B for rejoinder and arguments.
4. That feeling aggrieved of the Order dated.28.07.2016, the Applicants/Respondents are filling the instant application for setting aside the Order dated.28.07.2016 on the following grounds:

Put up to the court
along with appeal.

Ready

25/8/16.

GROUND:

- a. That the Impugned Order dated.28.07.2016 is against Law & Facts of the case hence liable to be set aside.
- b. That since valuable rights of the Applicants/ Respondents are involved in the instant case therefore proprietary demands that an opportunity may kindly be given to the Applicants/Respondents to defend their case.
- c. That justice demands that ample opportunity be given to both the parties to present and defend their case so that the matter is decided on merits and not on technicalities.
- d. That the delay in filling Written Reply by the Applicants/Respondents was not will full rather there were some documents which were missing and for that reason the delay in filling of Written Reply occurred.
- e. That Written reply is complete and ready to be filed before this Honourable Tribunal if the Order dated.28.07.2016 is set aside.

It is therefore humbly requested that the order dated.28.07.2016 may kindly be set aside and the Applicants/Respondents may kindly be given an opportunity to file the Written Reply in the interest of Justice so that the case is decided on merits.

Applicants/Respondents

Through

Asad Jan Advocate,
High Court, Peshawar.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re:

Appeal.No. 1225 / 2015.

Sajawal Khan.....Appellant

Vs

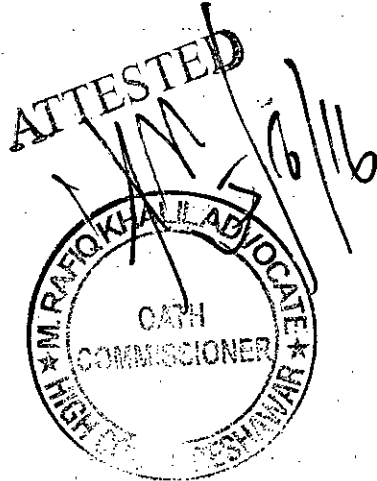
The Government of Khyber Pakhtunkhwa & others.....Respondents

AFFIDAVIT

I, Syed Aruj Abbas Sherazi, Public Relation Officer (Rescue 1122) Peshawar do hereby solemnly declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing material has been concealed from this Honourable Court.

(Identified By)

Asad Jan,
Advocate, Peshawar.



Deponent

1225-3238560-9

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

SERVICE APPEAL No.1226/2015

Sajawal Khan

======(APPELLANT)

VERSUS

The Secretary Relief & Rehabilitation & Settlement Deptt & Others======(Respondents)

**REPLY TO THE APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR
AND ON BEHALF OF RESPONDENT NO.3 & 4**

Respectfully Sheweth:-

Preliminary Objections:

1. That the appellant has got no locus standi to file the instant appeal.
2. That the appellant have concealed material facts from this honorable tribunal, thus he has not come to this honorable tribunal with clean hands.
3. That the appeal is not maintainable in its present form, due to lack of jurisdiction before this honorable tribunal as the respondents department is a corporate body and its employees does not come within the purview of civil servants , hence liable to be dismissed on this legal ground alone.
4. That the appellant is estopped by his own words and conduct to institute the present appeal as the appellant himself this fact in the departmental appeal that the appellant is not a civil servant under the KPK Civil Servant Act 1973.
5. That the appellant is not an aggrieved person, therefore the appeal of the appellant is not maintainable.
6. That the appeal of the appellant is badly time barred, therefore liable to be dismissed.
7. That the relationship between the Appellant and respondent department is Master & Servant, therefore the appeal of the appellant is not maintainable before this Honorable Tribunal.

PARAWISE REPLY


1. Para 1 of the appeal is correct to the extent that the appellant was initially appointed as Shift Incharge (BPS-12) in the Replying Respondent Department in the year 2012, while the remaining para is subject to proof.
2. Para 2 of the appeal is correct, hence need no reply.
3. Para 3 of the appeal is incorrect, hence subject to proof.
4. Para 4 of the appeal is also correct as the Respondent Department got the proof in shape of picture in respect of illegal meeting/demonstration of the appellant against the Respondent department, which badly effect the smooth and efficient work of the department, therefore after due process of law the explanation was issued and thereafter the show cause notice was issued to the appellant. (Copy of Pictures are attached as Annexure "A")
5. Para 5 of the appeal is correct to the extent of reply of show cause notice, It is further clarified that the appellant himself admitted in reply to explanation that he participated alongwith others in the illegal meeting/demonstration against the replying respondent department. **(Copy of explanation, reply, show cause notice & reply to show cause are attached).**
6. Para 6 of the appeal is correct to the extent that in respect of service structure the employees of replying respondents including the appellant filed writ petition before the Honorable Peshawar High Court Peshawar which was duly disposed off in view of the fact that new service structure is to be framed within a period of sixty days as the same was pending before the competent authority for finalization, therefore that adjudication have not concern with the present matter, hence the allegation is totally denied.
7. Para 7 of the appeal is correct to the extent of dismissal order dated 5/6/2015, it is further submitted that the said order was passed after due process of law hence the allegation of personal grudges is incorrect.
8. Para 8 of the appeal is incorrect as the appellant has not submitted his departmental appeal before the replying respondent.

REPLY OF GROUNDS

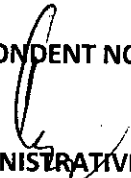
- A. Ground A of the appeal is totally incorrect, unjustified and against the material facts hence denied. In fact the appellant was dismissed from service after due process of law.
- B. Ground B of the appeal is totally incorrect, as the appellant has been treated in accordance with law as proper procedure has been adopted and after due satisfaction of law and facts the appellant has been dismissed from service.
- C. Ground D of the appeal is incorrect.
- D. Ground D of the appeal is totally incorrect in fact the appellant has indulged himself in illegal and unlawful activities against the replying respondent, which he categorically admitted in his reply of explanation, therefore the appellant has violated the service rules as well as the undertaking executed by the appellant at the time of joining of his service.
- E. Ground E of the appeal is totally incorrect detail reply has already been given in the above paras.
- F. Ground F of the appeal is totally incorrect as the appellant was provided proper opportunity of personal hearing and after due process of law the appellant was dismissed from service.
- G. Ground G of the appeal is also incorrect, the detail reply has already been given in the above paras.
- H. **Ground H of the appeal is totally incorrect, it is submitted that proper procedure has been adopted and after due process of law the appellant was dismissed from service, it is pertinent to mention here that the appellant is not a civil servant under the KPK Civil Servant Act 1973, and the relation between the appellant and replying respondent is Master & Servant, therefore the appeal of the appellant is not maintainable in its present form and this Honorable Tribunal have no jurisdiction to entertain the appeal of the appellant.**
- I. Grounds I to L of the appeal are totally incorrect as the detail reply has been given in the above paras.

It is therefore requested that the instant appeal in the light of above mentioned submissions may kindly be dismissed as it is without any substance and material.

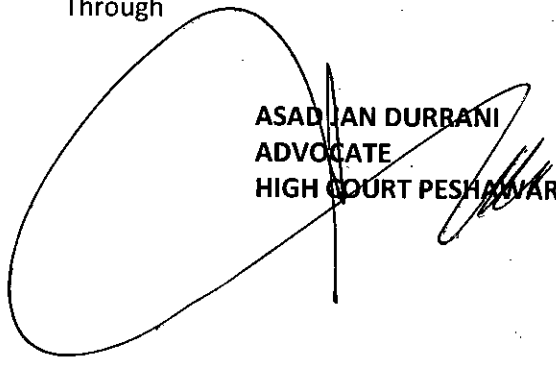
RESPONDENT NO.3


DIRECTOR GENERAL
Emergency Rescue Service (Rescue 1122)
Khyber Pakhtunkhwa

RESPONDENT NO.4


ADMINISTRATIVE OFFICER
Emergency Rescue Service
(Rescue 1122)
Khyber Pakhtunkhwa

Through


ASAD IAN DURRANI
ADVOCATE
HIGH COURT PESHAWAR

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

SERVICE APPEAL No.1226/2015

Sajawal Khan

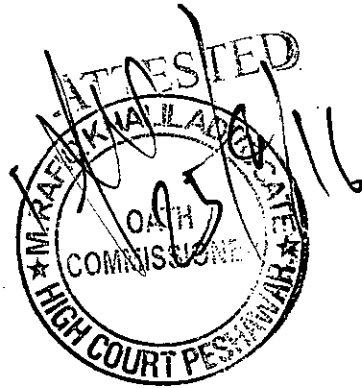
===== (APPELLANT)

VERSUS

The Secretary Relief & Rehabilitation & Settlement Deptt & Others===== (Respondents)

AFFIDAVIT

I Aruj Sherazi Litigation Officer Emergency Rescue Services (Rescue 1122) Department Khyber Pakhtunkhwa do hereby solemnly affirm that the contents of accompanying parawise reply on behalf of Respondents No.2 & 3 of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.



DEPONENT

12101-3238560-9



OFFICE OF THE DISTRICT EMERGENCY OFFICER
Khyber Pakhtunkhwa Emergency Rescue Service
 (Rescue - 1122), Peshawar



No.2/Discipline/DEO -Pesh/ 8718-22

Peshawar: 02-01-2014

To

Mr. Sajawal- Shift Incharge
 Station-33

Subject: EXPLANATION.

It has been observed with great concern that you have been relieved from Station-22, Emergency Rescue Service (Rescue-1122) Peshawar on dated 27-12-2013 but you did not report to your concerned Station till date.

2. The above mentioned facts prove you to be totally irresponsible, carefree official. Your attitude is totally against the office decorum/discipline and is tantamount to gross misconduct. However, before taking any punitive action against you, you are given hereby an opportunity to explain your position within three days of the receipt of this letter.

(DISTRICT EMERGENCY OFFICER)
 Emergency Rescue Service (Rescue 1122)
 Peshawar.

Copy to:-

- 1- Station House Incharge-33, ERS (Rescue 1122), Peshawar Khyber Pakhtunkhwa.
- 2- PA to Director (Admin), ERS (Rescue 1122), Peshawar Khyber Pakhtunkhwa.
- 3- Personal File.
- 4- Office file.

(DISTRICT EMERGENCY OFFICER)
 Emergency Rescue Service (Rescue 1122)
 Peshawar.

*Dear Mr. Sajawal
 Report on 20/1/2014*

Director	<i>Qud</i>
Deputy Director	
PA/ASD	
Accountant	

ERS (Rescue 1122) Peshawar

Dairy No: 2540

Dated: 7-1-14

*PA follow up
 9/1/14
 ASH 15/1*



DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RES

22),



25

GOVERNMENT OF KHYBER PAKHTUNKHWA

091-9222488 Fax: 091-9222487

No. 1-26/General/DA-1122/Estt: 1341-45 - Peshawar 17/03/2015

To

Mr. Sajawal,
(Shift Incharge),
District Peshawar.

Dispatch NO-473

Subject: EXPLANATION

The competent authority noticed with great concern that the state of the art service of Rescue 1122 is deteriorating with every passing day due to your conspiracies against the department which is the only department providing emergency rescue service to the masses entrapped in natural and manmade calamities.

You with malafide intention called a meeting of Station Coordinator, Shift Incharge, Lead Fire Rescuers of District Peshawar and Mardan on 14th March, 2015 at 02:00 PM to invoke the bad sentiments against the officers and department. The meeting you called is against E&D rules and Khyber Pakhtunkhwa Emergency Rescue Service Act 2012 and also against the West Pakistan essential service (maintenance) Act 1958:

Furthermore an affidavit/ undertaking which you signed at the time of appointment also clearly states that you will not indulge in any undesirable activities like ganging up or acts involving moral turpitude.

You have also been found engaging in the spread of false propaganda against the department, institution and the high authorities. You have also been found by forging of false signature of Rescuers in submission of false and baseless allegations to different quarters.

You are directed to explain your position regarding the convening of the meeting and provoking the staff against the department and officers, within the 03 days of issuance this explanation.

In case you failed to make satisfactory reply the strict disciplinary action will be initiated against you under the above mentioned rules.

[Handwritten Signature]

(DISTRICT EMERGENCY OFFICER) ✓

Emergency Rescue Service (Rescue 1122),
Khyber Pakhtunkhwa, Peshawar.

Copy to:

1. District Emergency officer, ERS (Rescue 1122), Peshawar, Khyber Pakhtunkhwa.
2. PS to Secretary Relief Rehabilitation & Settlement Department, Govt of Khyber Pakhtunkhwa.
3. PA to Director General, ERS (Rescue-1122), Khyber Pakhtunkhwa, Peshawar.
4. Personal files of the concerned.

Dispatch NO-473

(DISTRICT EMERGENCY OFFICER)

Emergency Rescue Service (Rescue 1122),
Khyber Pakhtunkhwa, Peshawar.

To

The District Emergency Office,
Emergency Rescue Service, Rescue- 1122,
KhyberPakhtunkhwa, Peshawar.

Subject: REPLY OF EXPLANATION

Respected sir,

In pursuance of explanation No. 1-26/General\DA-1122\Estt:1346-50 Peshawar: 18
2015, I submit to explain as under:

Allegation of conspiracies against the department, are being committed by us, as
alleged in above explanation, we deem conspiracy of any kind against state/department is curse.
However, in accordance with constitution & law of state a treatise to eradicate corruption,
nepotism, abuse of power, etc. etc. whereby justice & right, etc. could be trampled, are sole obligations
duties of any & every citizen in service or without service. Sir, we did so on 14\03\2015 with verbal
permission of director admin. Therefore, we did not commit any unlawful activity.

Sir!

No doubt we rendered affidavit\undertaking to serve diligently, & honestly
without fair & fear according to law of land & justice we have been doing so since joining service rescue
1122 till now & we re-affirm affidavit\undertaking to fulfill obligations & duties diligently, honestly &
without any fair & fear & not to be a tool for unlawful wishes.

Sir!

This explanation note is contempt of Honorable apex Peshawar high court Peshawar
order dated 18-03-2015 in writ petition No. 182-P/2015, we reserve right of contempt petition if this
explanation is not withdrawn (photo copy of order is enclosed).

It is, therefore, requested to very kindly close this explanation in the best interest of justice.

You're obediently,

Date: March 19, 2015

Dispatch No - 473

Sajawal Khan
SI



DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122),
GOVERNMENT OF KHYBER PAKHTUNKHWA
091-9222488 Fax: 091-9222487



DIRECTOR GENERAL

No.1-2/Discipline/DA-1122/Estt: 301-62 Peshawar: 01/04/2015

To

Mr. Sajawal Khan,
Shift Incharge ERS (Rescue-1122)
District Peshawar.

Subject: SHOW CAUSE NOTICE

I am directed to state that your reply of explanation dated 19.03.2015 is unsatisfactory and to enclose herewith a copy of Show cause notice to be responded with in three 03 days of issuance of this letter.

This show cause notice issued as per E & D Rules 2011, for your final written explanation.


ADMIN OFFICER

Emergency Rescue Service (Rescue-1122)
Khyber Pakhtunkhwa

Copy to:

- 1- PS to Secretary, RR&S Department, Government of Khyber Pakhtunkhwa.
- 2- PA to Director General, Emergency Rescue Service (Rescue 1122), Khyber Pakhtunkhwa.
- 3- Office File.


ADMIN OFFICER

Emergency Rescue Service (Rescue-1122)
Khyber Pakhtunkhwa



DIRECTORATE GENERAL
EMERGENCY RESCUE SERVICE
GOVERNMENT OF KHYBER PAKHTUNKHWA
091-9222488 Fax: 091-9222487

UE - 1122),



DIRECTOR GENERAL

No.1-2/Discipline/DA-1122/Estt:

Peshawar: / /2015

SHOW CAUSE NOTICE

I Dr. Asad Ali Khan Director General Khyber Pakhtunkhwa Emergency Rescue Service (Rescue-1122) as competent authority under E & D Rules 2011, do hereby serve you Mr. Sajawal Khan, Shift Incharge ERS (Rescue-1122) District Peshawar as follows;

1. It has been reported that on 14.03.2015, you with your ulterior intentions called a meeting of Station Coordinators, Shift Incharges, Lead Fire Rescuers of District Peshawar and Mardan to instigate the staff against the officers in general and the Department in particular.
2. Furthermore you have also violated clause (vi) of the affidavit which you have signed at the time of appointment wherein you agreed not to indulge in any undesirable activities like ganging up or acts involving moral turpitude.
3. In addition to the above charges, you have also been found in spreading false propaganda against the department and the high authorities. To achieve this objective of yours, you have been found by forging fake signature of Rescuers while forwarding false and baseless allegations to different quarters.
4. You are therefore charged for following allegations:
 - i. Misconduct under Section 2(L) (i) (ii) (iii) (iv) (v) & Section 3 (b) (e) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) rules, 2011.
 - ii. Action beyond your authority by convening the meeting and maligning the image of the institution and the respected officers of the department without any proof by provoking the staff against the department and institution constitutes misconduct on your part. You are hereby required to give written explanation within three days of the notice as to why disciplinary action should not be taken against you.
5. In case written reply to this notice is not received within time specified above, ex-parte proceedings will be initiated against you.

Ad

(DIRECTOR GENERAL)

Emergency Rescue Service (Rescue 1122),
Khyber Pakhtunkhwa, Peshawar.

خدمت خطاب جنرل ایمر جنسی ریسکیورس ریسکیور 1122 خیبر پختونخوا

عنوان: جواب بابت Show cause

Show cause No = 361-62

جناب عالی!

جودبانہ گزارش کی جاتی ہے۔ کہ میرے ایک ساتھی (ریسکیور نے اپنے بیٹے کی پیدائش
فوشی میں دعوت دی تھی۔ جو 2015-03-14 کو لہٹا اور عید گاہ میں ہوئی تھی۔
اس تقریب میں میں نے لوگوں کو DG صاحب کا پیغام بھی سنایا اور اس تقریب میں
ہمارے ساتھ ڈاکٹر آریار صاحب (مال شاہ ^{EO} اور عدیل شاہ ^{SHI} بھی موجود تھے۔
لیکن کسی نے ہمارے افسران کو اس بارے میں سن کا بیٹہ لیا تھا جس کی وجہ سے مجھے Show cause

میں Explanation ملی ہے۔

لہذا میں وضاحت کرتا ہوں کہ آج تک میں اپنے افسران بالا اور پیارٹمنٹ کے خلاف نہ کوئی سازش
کی ہے اور نہ کسی سازش کا حقہ بنا ہے اور نہ ہی گئے اور میں اپنے افسران اور ڈیپارٹمنٹ کا وفادار
تھا اور رہوں گا۔

لہذا میں التجا کرتا ہوں کہ اس تقریب میں شرکت کی وجہ سے میرے افسران کو دی گئی تکلیف سہی
و اس لیے میں معذرت خواہ ہوں اور مجھے اس الزام سے بری کی جائے۔

شکریہ

الحاج

العارض

شفٹ ایچارج سہاول خان ریسکیور 1122

DIA
104/15



DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE 1122)
GOVERNMENT OF KHYBER PAKHTUNKHWA



No.2-8/Summon/DG-1122/Estt: 2329-33

Peshawar: 25-5-2015

To:

Mr. Sajawal
Shift Incharge
Station-55
ERS (Rescue-1122) Mardan.

Subject: **SUMMON**

In reference to your reply of show cause notice on dated: 26/02/2015, You are hereby directed to ensure your presence before the competent authority (Director General Rescue-1122) on Tuesday dated: 26/05/2015 in Khyber Pakhtunkhwa Emergency Rescue Service (Rescue-1122) Headquarter at 02:00 pm sharp for personal hearing.

Admin Officer
Emergency Rescue Service (Rescue 1122),
Khyber Pakhtunkhwa, Peshawar.

Copy to:-

1. Director Admin, ERS (Rescue-1122) Peshawar.
2. Director Operations, ERS (Rescue-1122) Peshawar.
3. PA to Director General, ERS (Rescue-1122) Peshawar.
4. Personal file.

Admin Officer
Emergency Rescue Service (Rescue 1122),
Khyber Pakhtunkhwa, Peshawar.



DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122),
GOVERNMENT OF KHYBER PAKHTUNKHWA
091-9222488 Fax: 091-9222487



No.1-2/Discipline/DA-1122/Estt: 2384-90 Peshawar: 26 / 05 / 2015

To

Mr. Sajawal khan,
Shift Incharge ERS (Rescue-1122)
District Mardan.

2nd Notice

Subject: SUMMON

It is in reference to this office letter No. 2329-33, dated 25/05/2015, I am directed to state that you were called for personal hearing on 26/05/2015 at 02:00 pm in the office of DG Rescue 1122 in reference to the departmental inquiry and show cause notice but you failed to appear and remained absent.

In view of the above once again you are directed to ensure your presence before the competent authority (DG Rescue-1122), on 27/05/2015, at 11:00 am positively and avail an opportunity for personal hearing.

ADMIN OFFICER

Emergency Rescue Service (Rescue-1122)
Khyber Pakhtunkhwa

Copy to:

- 1- Director Admin, ERS (Rescue 1122) Peshawar.
- 2- Director Operations, ERS (Rescue 1122) Peshawar.
- 3- District Emergency officer, ERS (Rescue 1122) / Mardan. (With the direction to inform the official).
- 4- PS to Secretary, RR&S Department, Government of Khyber Pakhtunkhwa
- 5- PA to Director General, Emergency Rescue Service (Rescue 1122), Khyber Pakhtunkhwa.
- 6- Office File.

ADMIN OFFICER

Emergency Rescue Service (Rescue-1122)
Khyber Pakhtunkhwa

Received by wahid CTWO
through Fax at 08:28 am
dated 26/5/15
J 11/2
26/5



DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122),
GOVERNMENT OF KHYBER PAKHTUNKHWA



DIRECTOR GENERAL

No.1-1/DG-1122/Estt: 12745-51

Peshawar:

5-6-2015

OFFICE ORDER:

Consequent upon your unsatisfactory replies to the explanation issued vide No.1-26/General/DA-1122/Estt: 1341-45 dated 18-3-2015 and show cause notice vide No.1-2/Discipline/DA-1122/Estt: 361-62 dated 1-4-2015 followed by Departmental Enquiry, the Competent Authority after affording an opportunity of personal hearing twice, you did not bother to appear in person, therefore the competent authority has decided in the light of material on record to impose major penalty of dismissal from service on Mr. Sajawal Khan s/o Gul Haideen (Shift Incharge- ERS Rescue 1122) with immediate effect.

--SD--

(DIRECTOR GENERAL)

Emergency Rescue Service Rescue (1122)
Khyber Pakhtunkhwa

Copy to:-

1. Accountant General, Khyber Pakhtunkhwa.
2. District Emergency Officer, ERS (Rescue-1122), Peshawar/Mardan.
3. PS to Secretary Relief Rehabilitation & Settlement Department, Khyber Pakhtunkhwa.
4. Accountant, ERS (Rescue-1122) Peshawar/Mardan.
5. PA to Director General, ERS (Rescue 1122), Khyber Pakhtunkhwa.
6. Mr. Sajawal, Ex-Shift Incharge, ERS (Rescue 1122), Khyber Pakhtunkhwa.
7. Personnel File.

(ADMINISTRATIVE OFFICER)

Emergency Rescue Service Rescue (1122)
Khyber Pakhtunkhwa