

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEALS NO. 830/2015

Date of institution ... 10.07.2015

Date of judgment ... 03.08.2016.

Asfandyar Khan, Ex-Office Assistant Commissioner Office Mardan Division, Mardan
S/O Taj Muhammad R/O Khazana Dheri, P/O Khanjar Tehsil and District Mardan.

... (Appellant)

VERSUS

1. Senior Member Board of Revenue Govt. of KPK Peshawar.
2. Commissioner, Mardan Division Mardan.

... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 09.07.2015
PASSED BY RESPONDENT NO.1 WHERE BY DEPARTMENTAL APPEAL OF
THE APPELLANT FILED AGAINST THE ORDER DATED 18.05.2015 OF
RESPONDENT NO.2 HAS BEEN DISMISSED.

Mr. Ijaz Anwar, Advocate.

.. For appellant.

Mr. Muhammad Jan, Government Pleader

.. For respondents

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

JUDGMENT

PIR BAKHSH SHAH, MEMBER: It was stated that the appellant was appointed as Office Assistant in the office of Commissioner, Mardan on 02.01.2009, he was involved in a criminal case vide FIR No. 62 dated 05.02.2012 which led to his suspension by the competent authority and a show cause notice dated 19.10.2014 under rule-9 of the E&D Rules, 2011 was issued to him. A reply dated 23.08.2014 to this show cause notice was received by the respondents through one Syed Rahim who was stated to the uncle of the appellant. According to the respondents as the appellant remained willfully absent from duty therefore, he was removed from service vide order dated 14.10.2014 against which order his departmental appeal was accepted on 22.02.2015 as a consequence whereof he was reinstated

into service and the case was remitted back to the competent authority with the instructions to reconsider the matter and to ascertain whether the procedure set out in rule-7 of (E&D Rule-2011) had to be followed or not in the present case?. This time the competent authority vide his order dated 18.05.2015 rejected case of the appellant by holding that citation of show cause notice in the two dailies was not needed as required under rule-09 of E&D Rules. The higher authority also rejected his departmental appeal vide order dated 09.07.2015, hence this appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. Arguments heard and record perused.

3. Learned counsel for the appellant submitted that when the appellant was once reinstated into service by the appellate authority, the competent authority could not again remove appellant from service. He next contended that the respondents have not fulfilled the requirements of rule-9 of E&D Rules 2011^{as} when the appellant was not personally served on show cause notice it was mandatory that it should have been published in the news paper. On factual side it was stated that appellant submitted BBA application (on 17.09.2014) which was rejected on 13.10.2014. That the appellant was acquitted under section 265-k CRPC in the criminal case by the court of competent jurisdiction on 28.10.2014, therefore, the respondents was required to have given him full opportunity of defense and hearing when once he was acquitted of the charge. But it is evident that when the appellant was yet behind the Bar, the competent authority removed him from service. The learned counsel argued that the penalty is too harsh and opportunity of defense has not been provided to the appellant. He submitted that the order impugned against may be set aside and appellant reinstated in to service with all back benefits.

4. The appeal was resisted by learned Government Pleader who submitted that when the appellant replied to the show cause notice dated 19.08.2014 through his uncle Syed Rahim, the competent authority under rule-9 of the E&D Rules-2011 was not obliged to publish show cause notice to the appellant in the news paper. He next replied that the appellant

willfully remained absent and he was a fugitive from law and his absence amount to misconduct therefore, he was rightly removed from service. He defended the impugned orders and stated that disciplinary action against the appellant was taken in accordance with the rules and that all the codal formalities were fulfilled. He submitted that being devoid of merits, the appeal may be dismissed with cost.

6. We have carefully perused the record and have patiently considered pro & contra arguments for the parties. It is evident from perusal of orders of the competent authority dated 12.02.2015 as well as his order dated 18.05.2015 that the appellant has been proceeded against under rule-9 of the E&D Rules-2011 when once a show cause notice dated 19.08.2014 was issued to the appellant at his home address so the same, according to the respondents, was replied by the appellant on 25.08.2014 through his uncle Syed Rahim. Here it is worth mentioning that such reply was denied before us on behalf of the appellant. Admittedly the competent authority drew the inference that as the appellant has been duly served therefore, publication of show cause notice through citation in the two dailies news paper was no more required. This may be observed that proceedings under rule-9 were not entirely completed and rule-9 was not acted upon in its true spirit. It is the opinion of this Tribunal is that when once the competent authority concluded that show cause notice was duly served on the appellant then it should have resorted to proceedings under rule 5/7 of the E&D Rules-2011 as also pointed out by the appellate authority in its order dated 12.02.2015 but it is evident that neither any show cause notice was issued to the appellant nor that any reason was given as to why proceedings of enquiry are dispensed with. In the stated situation it is the considered view of the Tribunal that neither proceedings under rule-9 of the E&D Rules were taken to its logical and legal end nor proceedings under rule 5/7 were initiated and thus the matter became entangled. It is also on record that BBA order of the appellant was rejected on 13.10.2014 and on the next dated on 14.10.2014 he was removed from service when he was inside the jail. Fortunately he earned his acquittal on 28.10.2014. In the view of this situation, the Tribunal is constrained to observe that harsh penalty of removal from service has been awarded to the appellant without proper opportunity of defense. We

are therefore, constrained to set aside the orders impugned against. Consequently, the impugned orders are set aside and the appellant is reinstated into service. The intervening period shall be treated as his leave of the kind due. The department if so advised may initiate enquiry proceedings against the appellant in which he should be given full opportunity of defense and hearing and the same *de-novo* proceedings shall be concluded in the time stipulated under the rules. Appeal is accepted in the above terms. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
03.08.2016



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

03.08.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present.

Vide our detailed judgment of today consists of four pages placed on file, in view of this situation, the Tribunal is constrained to observe that harsh penalty of removal from service has been awarded to the appellant without proper opportunity of defense. We are therefore, constrained to set aside the orders impugned against. Consequently, the impugned orders are set aside and the appellant is reinstated into service. The intervening period shall be treated as his leave of the kind due. The department if so advised may initiate enquiry proceedings against the appellant in which he should be given full opportunity of defense and hearing and the same de-novo proceedings shall be concluded in the time stipulated under the rules. Appeal is accepted in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record.

Announced
03.08.2016



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

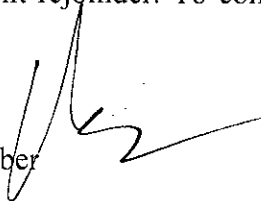
10.02.2016


Counsel for the appellant and Mr. Mukhtiar Ali, Supdt. alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.5.2016.


Chairman

16.05.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for time to submit rejoinder. To come up for rejoinder/arguments on 3.8.2016.


Member


Member

29.07.2015

Appellant Deposited
Security & Process Fee



Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Assistant in the office of Commissioner Mardan when subjected to inquiry on the allegations of involvement in a criminal case and wilful absence and removed from service vide impugned order dated 14.10.2014 regarding which he preferred departmental appeal on 11.11.2014 on the basis of which the case of the appellant was sent back to the authority for reconsideration and the authority maintained the impugned order of removal from service vide order dated 18.5.2015 regarding which the appellant again preferred departmental appeal on 8.6.2015 which was rejected on 9.7.2015 and hence the instant appeal on 10.7.2015.

That the appellant was innocent and acquitted of the charges and, moreover, the inquiry was not conducted in the prescribed manners.

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 27.10.2015 before S.B.


Chairman

27.10.2015



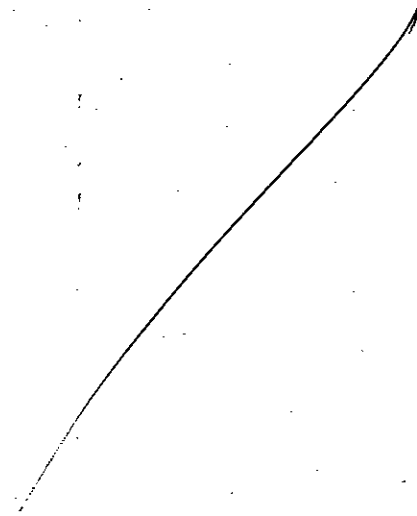
Appellant in person and Mr. Mukhtiar Ali, Supdt. alongwith Addl. A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 10.2.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 830/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	22.07.2015	<p>The appeal of Mr. Asfanyar Khan resubmitted today by Mr. Fazal Shah Mohmand 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	28-7-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>29-7-15</u></p> <p style="text-align: right;"> CHAIRMAN</p> 


The appeal of Mr. Asfandyar Khan Ex-Office Assistant Commissioner Office Mardan received to-day i.e. on 10.07.2015 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

Annexures-C, F and J of the appeal are illegible which may be replaced by legible/better one.


No. 1062 /S.T,

Dt. 10/7 /2015

Mr. Fazal Shah Mohmand Adv. Pesh.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Resubmitted after completion.


22/7/15

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 830 /2015

Asfandyar Khan.....Appellant.

V E R S U S

SMBR & Others.....Respondents.

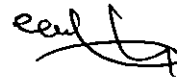
I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-4
2.	Copies of the Orders	A & B	5-7
3.	Copy of FIR	C	8
4.	Copy of Show Cause Notice & Reply	D & E	9-11
5.	Copy of Order	F	12-
6.	Copy of Order of removal	G	13
7.	Copy of Order & Judgment dated 28-10-2014	H	14
8.	Copy of departmental appeal & Order dated 12-02-2015	I & J	15-18
9.	Copy of Order dated 18-05-2015	K	19-20
10.	Copy of departmental appeal & Order dated 09-07-2015	L & M	21-25
11.	Waklat Nama		26

Dated:-10-07-2015


Appellant

Through



Fazal Shah Mohmand

Advocate Peshawar.

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar

Cell# 0301 8804841

①

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 830 /2015

Asfandyar Khan Ex Office Assistant Commissioner Office Mardan Division
Mardan S/O Taj Muhammad R/O Khazana Dheri, P/O Khanjar Tehsil and
District Mardan.Appellant.

G.W.P. Province
Service Tribunal
Diary No 820
dated 10-7-15

V E R S U S

1. Senior Member Board of Revenue Govt. of KPK Peshawar
2. Commissioner, Mardan Division Mardan.

~~.....~~ Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 09-07-2015 PASSED BY
RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL OF
THE APPELLANT FILED AGAINST THE ORDER DATED 18-05-2015
OF RESPONDENT NO 2 HAS BEEN DISMISSED.**

PRAYER:-

On acceptance of this appeal the impugned order dated 09-07-2015 of respondent No 1 and Order dated 18-05-2015 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed as Assistant BPS-14, by the Commissioner Peshawar, vide Order dated 02-01-2009, he submitted Arrival, was transferred to Commissioner office Mardan and upon completion of probation period, his services were regularized vide Office Order dated 27-01-2011. (Copies of the Orders are enclosed as Annexure A & B).
2. That the appellant was falsely implicated in a false murder case vide FIR No 62 dated 05-02-2012 of Police Station Saddar Mardan, and as such was unable to have attended the office. (Copy of FIR is enclosed as Annexure C).

Filed to day
Registrar
10/5/15

re-submitted to day
and filed.
Registrar
22/7/15

[REDACTED]

3. That the appellant was issued show cause Notice on 19-08-2014, which was replied in detail explaining the true position. **(Copy of show cause Notice and reply are enclosed as Annexure D & E).**
4. That the appellant applied for Bail Before Arrest on 17-09-2014, which was recalled on 13-10-2014. **(Copy of the Order is enclosed as Annexure F).**
5. That finally, the appellant was awarded the penalty of Removal from service by the Commissioner Mardan Division vide Office Order dated 14-10-2014. **(Copy of the Office Order is enclosed as Annexure G).**
6. That finally the appellant was acquitted of the charges by the Court of Competent jurisdiction vide Order and judgment dated 28-10-2014. **(Copy of the Order & Judgment is enclosed as Annexure H).**
7. That after acquittal the appellant filed departmental appeal before your honor on 11-11-2014, and vide Order date 12-02-2015, your honor was pleased to set aside the impugned order dated 14-10-2014, and Commissioner Mardan was instructed to reconsider the matter and to ascertain whether the procedure set out in Rule 9 had to be followed in the case or not. **(Copy of Departmental appeal & Order dated 12-02-2015 are enclosed as Annexure I & J).**
8. That finally vide Order dated 18-05-2015 the Commissioner Mardan, maintained his own Order dated 14-10-2014. **(Copy of the Order is enclosed as Annexure K).**
9. That the appellant filed departmental appeal before respondent No 2 on 08-06-2015 which was dismissed vide Order dated 09-07-2015. **(Copy of departmental appeal & Order dated 09-07-2015 are enclosed as Annexure L & M).**
10. That the impugned Order dated 09-07-2015 of respondent No 1 and Order dated 18-05-2015 of respondent No 2 are against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUND:-

- A. That the impugned orders are illegal and void ab initio.

- B. That the appellant has not been treated according to law and rules and the Commissioner Mardan has badly violated the procedure set forth by the law and rules.
- C. That no charge sheet was communicated to the appellant.
- D. That no inquiry was conducted in the matter to has found out the true facts and circumstances.
- E. That the absence from duty was not willful and deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- F. That the appellant was falsely implicated in a false case, from which he has been acquitted by the Court of Competent jurisdiction, and as such is entitled to be reinstated in service.
- G. That as respondent No 2 had set aside the impugned order dated 14-10-2014, and had remanded the case to the Commissioner Mardan just to ascertain as to whether the procedure set out in Rule 9 of the E & D Rules had to be followed or not, as such the order dated 18-05-2015 amounts to exceeding the authority.
- H. That even otherwise the order date 14-10-2014 of the respondent No 2 was set aside by respondent No 1 and he had no authority to maintain an order which was already set aside by the appellate authority, as such the order dated 18-05-2015 is not maintainable in the eyes of law.
- I. That the appellant did nothing that would amount to misconduct and he has been awarded major penalty in violation of law, rules and dictums of the superior Courts.
- J. That the impugned orders are not speaking Orders and as such not maintainable in the eyes of law.
- K. That the impugned orders are defective and as such not maintainable in the eyes of law.

L. That the appellant was not afforded the opportunity of personal hearing.

M. That the appellant has more than 5 years of service with unblemished service record.

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

Any other relief not specifically asked for and deemed appropriate in the circumstances of the case may also be granted in favor of the appellant.

[Signature]
Appellant

Dated:-10-07-2015

Through

[Signature]

Fazal Shah Mohmand
Advocate, Peshawar.

AFFIDAVIT

I, Asfandyar Khan Ex Office Assistant Commissioner Office Mardan Division Mardan S/O Taj Muhammad R/O Khazana Dheri, P/O Khanjar Tehsil and District Mardan, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

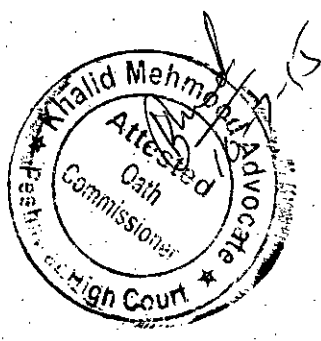
[Signature]

Identified by

DEPONENT

[Signature]

Fazal Shah Mohmand
Advocate Peshawar





COMMISSIONER
PESHAWAR DIVISION PESHAWAR

12th the Mall Peshawar Cantt (tel.9211323 fax 9214655)

Dated Peshawar the 2nd Jan: 2009

(5) A

OFFICE ORDER.

No.PS/Commr/Pesh/1-2/2008/

On the recommendation of Departmental Selection Committee Mr. Asfandyar Khan S/O Taj Muhammad r/o Village Khazana Dheri, P.O. Khanajar Tehsil & District Mardan is hereby appointed as Assistant (BPS-14) on temporary basis on usual pay and allowances admissible under the rules against the vacant post subject to the terms & conditions mentioned below:-

TERMS AND CONDITIONS.

1. He will get pay at minimum of BPS-14 (Rs.4920-380-16320) including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
2. He will produce medical fitness certificates from Medical Superintendent, Services Hospital Peshawar.
3. He will be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
4. He will, for all intents and purposes, be Civil Servant except pension/commutation/gratuity. In lieu of pension and gratuity, he will be entitled to receive such an amount contributed by him towards Community Provident Fund (CPF) alongwith contributions made by Govt. to his account in the said fund, in the prescribed manner.
5. His employment in the office of Commissioner Peshawar is purely on temporary basis and his services will be liable to terminate at any time without assigning any reason before the expiry of the period of probation/extended period of probation. If his work during this period was not found satisfactory in such an event, he will be given a month's notice of termination from service or one month pay in lieu thereof. In case he wishes to resign at any time a month's notice shall be necessary or in lieu thereof one month pay shall be forfeited.
6. He shall initially be on probation for a period of two years extendible upto 3 years.
7. If the above terms & conditions are accepted to him, he should report to the office of Commissioner Peshawar Division Peshawar on or before 16.01.2009, failing to which the order of appointment shall stand null and void.
8. His services are transferable anywhere in the Divisional level.

-Sd-

COMMISSIONER PESHAWAR

Dated 02/01/2009

Endst: No.PS/Commr/Peshawar/1-2/2008. /21

Copy forwarded to:-

1. The Senior Member Board of Revenue NWFP, Peshawar
2. The Accountant General NWFP, Peshawar.
3. The District Coordination Officer, Peshawar.
4. The Section Officer (FATA), Home & TAs Department.
5. The Assistant to Commissioner (P/D), Peshawar.
6. The Budget Assistant O/O Commissioner, Peshawar.
7. Mr. Asfandyar Khan S/O Taj Muhammad r/o Village Khazana Dheri, P.O. Khanajar Tehsil & District Mardan
8. Personal file/office order file.

MUNTAZIR KHAN
Assistant to Commissioner (Revenue)

AM

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Aed

To,

The Commissioner Peshawar Division,
Peshawar.

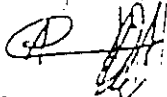
Subject : ARRIVAL REPORT.

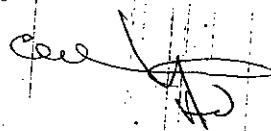
Sir,

In compliance of Office Order No. PS/Commr/Pesh/1-
2/2008/21 dated 02.01.2009, I hereby submit my arrival report for duty
today on 06.01.2009 (F.N).

Thanks.

Yours Obediently,


(Asfandyar Khan)
Assistant.

Attested



7

OFFICE OF THE COMMISSIONER MARDAN DIVISION, MARDAN.

OFFICE ORDER

Consequent upon completion of probation period of two years w.e.f. 06-01-2009 to 05-01-2011, services of the following officials are hereby regularized on permanent basis.

S.No	Name of Official	Designation
✓ 1.	Mr. Asfandiyar Khan	Assistant (BPS-14)
2.	Mr. Umair Khan	Assistant (BPS-14)
3.	Mr. Waqas Ahmad	Junior Clerk (BPS-07)
4.	Mr. Muhammad Jalil	Naib Qasid (BPS-01)
5.	Mr. Muhammad Zubair	Mali (BPS-01)



Commissioner,
Mardan Division, Mardan.

NO. 289-96 /ACR (M)

Dated Mardan the 27 /01/2011

Copy forwarded to the:-

- 1- District Accounts Officer, Mardan.
- 2- PS to Commissioner Mardan Division, Mardan.
- 3- Finance Assistant (Local).
- ✓ 4- Officials concerned.


Assistant to Commissioner (Rev),
Mardan Division, Mardan.

Attested



1	مقررہ وقت 62	02 05 وقت 45-09
2	تاریخ وقت رپورٹ 5 2012	10-45 جاگڈی بیڈ 2 2012 وقت 20-11
3	نام و سونوٹ اطلاع و شہرہ متخین	عبدالواحد ولد عبد الرشید قوم افغان بھراک ساکن خزانہ و صبری
4	مخبر کفایت صوم	34-324-302 P.P.C
5	جائے وقوع خاندان کا رہائش گاہ	راہ نذر مسجد حاجی عبد الرشید واقع تھا سے جانب غورب بھراک 6/6
6	نام و سونوٹ ملزم	اسٹنڈ باہر ولد تاج محمد 12 نیاز علی ولد اکبر خان خزانہ
7	تھمبہ کاروں کی جو تصنیق کے متعلق	بدر مسرہی تھا صراہم مقدمہ درج اہل بھراک جاگڈی
8	تھمبہ کاروں کی	بطور سبیل رپورٹ

بوقت صدر ایک تقریبی عمر اہل منہا بن محمد عارف 44 کیس کی حیثیت سے مردان بہت شہیل شہیل
 254 وصول ہو کر ذیل سے - مخبریت 6/6 صاحب تھا صدر مردان عبد الواحد ولد عبد الرشید قوم افغان
 عمر 56 سال ساکن خزانہ و صبری سے لاش جیٹیا آتش عبد الودود ولد عبد الزراق بھراک 26 سال
 57 مخبریت 2 طفلہ عمر 9 سال مرینہ دختر محمد انور بہ آمداد ایلدیان رشتہ داران آتش کیس کی حیثیت سے
 مردان لاکھ بون رپورٹ کرنا صلیبہ مسیحی حاجی عبد الرشید میں متری کینا کو متعلقہ کام کرنے میں
 معروف ہے۔ کہ چھانٹ عبد الودود ولد عبد الزراق اور اسٹنڈ باہر ولد تاج محمد کے
 حابین زبانی تدار بیوی - اسٹنڈ باہر سہرہاگو فور جاگڈی مسیحی بہ کلمہ شہلوغ عبد
 نیاز علی ولد اکبر خان ساکنی دیکھ اسم آر کے یکدم جیٹیا آم عبد الودود بھراک شہلوغ
 سے بہ ارادہ قتل فائرنگ شروع کی۔ جن سے جیٹیا آم عبد الودود تدار کر فرار
 ہوا۔ جبکہ طفلہ مرینہ تدار کے زخمی ہوئی۔ جو کہ وہاں پر
 واقع خزانہ کے ملزم عبد الولی ولد عبد الزراق کا شہید ہے۔ وہم عناد
 وقت تدار ہے۔ میں جیٹیا ام عبد الودود کی قتل اور طفلہ مرینہ کی مخبریت
 کا یہ خلاف ملزم خان متنازعہ بالاد عویس اہل بھراک - الفہ عمر انور ولد طلال قوم افغان
 عمر 45 سال ساکن خزانہ و صبری نے رپورٹ بالائی تھمبہ کی

DEFENCE

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ابتدائی اعلان کے وقت صدر این کے رکنوں کی جانب سے جو اعلان کیا گیا اس میں حضور صلی اللہ علیہ وسلم کے بارے میں جو بیانات دیے گئے تھے وہ صحیح اور درست تھے۔

صبراً یہاں تک رہو کہ اس اعلان کے تحت جو بیانات دیے گئے تھے ان میں سے جو بیانات صحیح اور درست تھے ان کو ماننا اور جو بیانات غلط اور نادرست تھے ان کو مٹانا اور ان کے بارے میں جو بیانات دیے گئے تھے ان سے انکار کرنا۔

اس اعلان کے تحت جو بیانات دیے گئے تھے ان میں سے جو بیانات صحیح اور درست تھے ان کو ماننا اور جو بیانات غلط اور نادرست تھے ان کو مٹانا اور ان کے بارے میں جو بیانات دیے گئے تھے ان سے انکار کرنا۔

br of absconding
has not been

Attested
Handwritten signature

Handwritten Urdu text in a dense, cursive script, likely a historical record or administrative document. The text is arranged in several horizontal lines, though some are partially obscured by the dark right margin. The ink is dark, and the paper shows signs of age and wear.

MASS De Suddo 105/021/0012

Handwritten Urdu text at the bottom of the page, possibly a signature or a concluding statement, located within a horizontal border.

9 D



OFFICE OF THE COMMISSIONER MARDAN DIVISION MARDAN

SHOW CAUSE NOTICE

I Mr. Khalid Hussain, Commissioner Mardan Division Mardan, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) rules, 2011, do hereby serve you, Mr. Asfandiyar Khan, Office Assistant, as follows:

1. Whereas, you willfully remained absent from your official duties since 05-02-2012 without any leave/permission:

Therefore I am satisfied that you are habitual absentee from official duty which falls within the preview of "Misconduct".

2. As a result thereof, I as competent authority, have tentatively decided to impose upon you major penalty under rule-IV of the said rules.

3. you are thereof, required to immediately attend the office and to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 10 days, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

(KHALID HUSSAIN)
COMMISSIONER
MARDAN DIVISION MARDAN

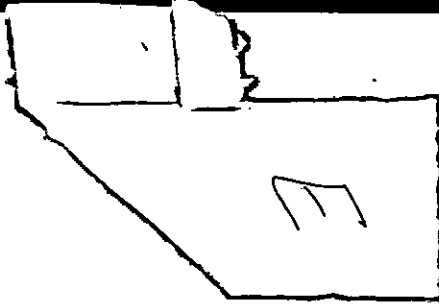
CC: PS to Commissioner Mardan Division Mardan.

Official Connected

Assistant to Commissioner (Rev.)
Mardan Division Mardan.

Attested

No. 2031 / RCR / BA
Date: 17-8-2014



10

To

The Honourable Commissioner,
Mardan Division,
Mardan.

ALR
25/8

WRITTEN REPLY OF THE SHOW CAUSE

NOTICE ISSUED ON DATED 19-8-2014

R/Sr.

The firwise reply are as follow.

1. I have never wilfully remained absent from my official duty, but in fact unluckily I am falsely implicated in murder case vide FIR NO 62 dt 5-2-12 due to our village friction by our opponents. (copy of the FIR is attached)

more over I am highly committed, dedicated and faithful to my duty / performances.

2. That your honour, is a competent authority but your honour would have also look at the circumstances for which I am suffering because

Attestel

[Signature]

EA
ce
Put up today
25/8.

my opponents/enemies like a thirsty hounds are behind me to engulf me

3. That I promised with your honor that I will at once appear for my duties as my release in the above referred case by competent court of law.

Therefore it is respectfully prayed that the period of my absence may kindly be considered as a leave for the petition.

Note: I hope that keeping in view my prevailing circumstance, your honor will dropped further proceeding.

Dated. 23-08-14

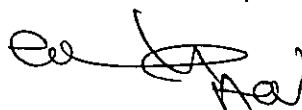
Submitted by

Asfandiyar Khan

Through Uncle

Said Rehman

Attested



11

(Better Copy)

F/12

Order
13/10/2014

Accuse/petitioner on ad-interim bail present. Counsel for the accused/petitioner, counsel for the complainant and Dy: PP for the state present. Arguments heard and record perused.

Accused/petitioner Asfandyar S/o Taj Muhammad R/o Khazana Dheri, District Mardan seek confirmation of pre-arrest bail in case FIR No 62, dated 05/02/2012 u/s 302/324/34 P.P.C of Police Station Saddar, Mardan already extended to the petitioner vide order dated 12/09/2014.

Brief facts of the case are Abdul Wahid S/o Abdul Rasheed brought the deed body of his nephew Abdul Wadood and also brought injured child namely Madina with the help of co-villagers and relatives to the casualty hospital Mardan and reported the matter to the effect that on 05/02/2012 he was busy in work as Labour with mason in the mosque of Haji Abdul Rasheed when suddenly Abdul Wadood S/o Abdul Raziq and Asfandyar S/o Taj Muhammad accused/petitioner had exchange of hard words with each other, on this accused/petitioner straightaway went to his house and came back armed with Kalashnikov alongwith co-accused Niaz Ali and started firing at his nephew Abdul Wadood with Kalashnikov in order to commit his qatal-e-amad with their firing his nephew got hit and died, while a child namely Madina, who was plying there to the spot had also received injuries. Occurrence was witnessed besides him by one Abdul Awal S/o Abdur Raziq. Motive was verbal altercation, as mentioned above. He charged the accused for the commission of qatal-e-amad of his nephew and injuring minor child namely Madina. His report was recorded in the shape of Murasala and on the basis of which the subject FIR was registered.

Attested

 Adb

Perusal of record reveals that no malafide on part of complainant or prosecution has been established on record and there is no evidence on record which may reveals the false implication of the accused/petitioner. No exceptional grounds exist to grant extra ordinary relief of ad-interim pre arrest bail at this stage, as such the BBA of the accused/petitioner is not arguable for the purpose of bail, hence the same is dismissed and the ad-interim pre arrest bail already granted to the accused/petitioner vide order dated 12/09/2014 is hereby recalled.

Requisitioned record be sent forthwith to quarter concerned and file of this court be consigned to record room after completion and compilation.

Announced
13/10/2014

Sd
Miss Ambreen Navid
Additional Sessions Judge-IV,
Mardan

13/09/2014

Accused/petitioner on ad interim bail present. Counsel for accused/petitioner, counsel for complainant and Dy. PP for the state present. Arguments heard and record perused.

Accused/petitioner Asfandiar son of Taj Muhammad / 70 Khazana Dheri, District Mardan seeks confirmation of pre-arrest bail in case FIR No.62 dated 05.02.2012 under sections 302/324/3 PPC of police station Saddar, Mardan, already extended to the petitioner vide order dated 17.09.2014.

Brief facts of the case are that Abdul Wahid son of Abdur Rasheed brought the dead body of his nephew Abdul Wadood and also brought injured child namely Madina with the help of co-villagers and relatives to the casualty hospital Mardan and reported the matter to the effect that on 05.02.2012 he was busy at work as labor with mason in the mosque of Haji Abdur Rasheed when suddenly Abdul Wadood son of Abdur Raziq and Asfandiar son of Taj Muhammad/ accused petitioner had exchange hot words with each other. On this accused/petitioner straight away went to his house and came back armed with Kalashinkove along with accused Niaz Ali and started firing at his nephew Abdul Wadood with Kalashinkove in order to commit his Qatl-Amd with their firing, his nephew got hit and died, while a child namely Madina who was playing near to the spot had also received injuries. Occurrence was witnessed besides him by one Abdul Awal son Abdur Raziq. Motive was verbal altercation, as mentioned above. He charged the accused for the commission of Qatl-Amd of his nephew and injuring minor child Madina. His report was recorded in the shape of murasila and on the basis of which the subject FIR was registered.

Perusal of the record reveals that no mala fide on the part of the complainant or prosecution has been established on record and there is no evidence on record which may reveal the false implication of the accused/petitioner. No exceptional ground exist to grant extra-ordinary relief of ad interim pre-arrest bail at this stage, as such, the BBA of the accused/petitioner is not arguable for the purpose of bail hence the same is dismissed and the ad interim pre-arrest bail already granted to accused/petitioner vide order dated 17.09.2014 is hereby recalled.

Requisitioned record be sent forthwith to quarter concerned and file of this court be consigned record room after completion and compilation.

16/10/14
16/10/14
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16-10-14
16-10-14
16-10-14

Announced
13.10.2014

(Miss Amreen Naved)
Additional Sesssions Judge-IV, Mardan



Atgto
Ad

51

PDS - P. M. W. P. B. P. M. W. P. B. P. M. W. P. B.

No. of Order or Proceedings	Date of Order or Proceedings	Order or other proceedings with signature of Judge or Magistrate and where necessary
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Or-1	17.09.2014	<p>BBA petition submitted by counsel for petitioner. Accused/petitioner: Asfandiar son of Taj Muhamad r/o Khazana Dheri Mardan along with his counsel present.</p> <p>Petitioner seeks his pre-arrest bail in case FIR No.62 dated 05.02.2014 under sections 302/324/34 PPC of police station Saddar, Mardan.</p> <p>Contend malafide and false implication. The application is supported by affidavit. In the absence of record, petitioner is admitted to ad-interim pre-arrest bail in the sum of Rs.100,000/- with two sureties each in the like amount to the satisfaction of this court.</p> <p>Petitioner is directed to join investigation before date fixed. Notice of record for 24/9/14.</p> <p>Miss Ambareen Navid Additional Sessions Judge-IV Mardan</p>
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2.	24/9/14.	<p>Accd-Petitioner on ad-interim bail present. SPP present. Complt in person present. Put up for arguments on 1.10.14.</p> <p>ASJ, IV, Mardan.</p>
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3	10.14.	<p>Accd-Petitioner on ad-interim bail present. SPP present. Complainant present. record received. Complt requested for adjournment to engage counsel. Put up for arguments on 09/10/14.</p> <p>ASJ, IV, Mardan.</p>
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of 01	09.10.2014	<p>Accused/petr. on ad interim bail present. Complainant along with counsel present. Counsel for the complainant submitted v.nama and requested for adjournment which is allowed. Put up for arguments on 13.10.2014.</p>
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EXAMINED
By the
Sessions Judge
Mardan

13



OFFICE OF THE COMMISSIONER MARDAN DIVISION MARDAN

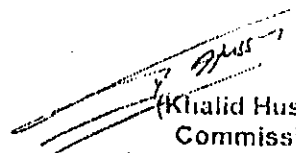
Attention
Fazal Shah Mahmood
Cell: 0301-8804841

OFFICE ORDER

No. 2292 /ACR/EA/2-1

Dated Mardan the: 16/10-2014

1. Whereas you Mr. Asfandiyar Khan, Office Assistant have remained willfully absent from duty since 05-02-2012, without any leave/permission Which falls within the preview of misconduct
2. Whereas a show cause notice was issued to you to resume the duty and you were directed to appear in person for personal hearing to which you submitted a reply through a representative and not even bothered to appear in person.
3. Whereas it was disclosed to this office through local police vide letter No. 417/G3 dated 10.2.2012 that F.I.R No.62 dated 05.02.2012 u/s 302/324/34 have been lodged against you and you have reported through police vide letter No.4687/G3 dated 15.9.2014 to have absconded yourself from legal action/arrest and have not yet surrendered.
4. Whereas you have concealed aforesaid facts from this office which is a misconduct on your part.
5. Whereas you could not give any cogent and convincing reason in your reply for your willfull absence for more than two & half years.
6. Consequent upon the aforementioned facts; the undersigned being competent authority is pleased to impose upon you Mr. Asfandiyar Khan, Office Assistant **Major penalty of Removal from Service** under Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011.

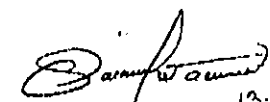

 (Khalid Hussain)
 Commissioner
 Mardan Division Mardan
 (Competent Authority)

Copy forwarded to:

- 1- Secretary-I, Board of Revenue, Govt of Khyber Pakhtunkhwa, Peshawar
- 2- Deputy Commissioner Mardan.
- 3- Deputy Commissioner Swabi.
- 4- District Comptroller of Accounts, Mardan.
- 5- PS to Commissioner Mardan Division Mardan.
- 6- Finance Assistant (local).
- 7- Official concerned.

AAsho

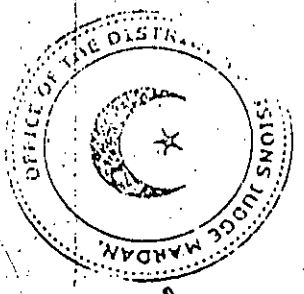
certified


 (Qaisar Khan)
 13-10-14

Assistant to Commissioner (Rev)
 Mardan Division Mardan

Dr-40
28.10.2014

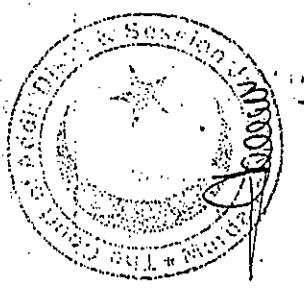
نصابی اور اہل سنت سے...
مقررہ 66/52
20/12
28/10/14
05/11/14
سما رہا (بچہ نیا زلم)



Accused Niaz Ali present on bail and accused Asfandiar produced in custody. Supplementary challan of accused Asfandiar received, placed on file.

Arguments on application under section 265-K Cr.P.C heard and record perused.

Brief facts of the case are that Abdul Wahid son of Abdur Rashid brought the dead body of his nephew Abdul Wadood and also brought injured child namely Madina, with the help of co-villagers and relatives to the casualty hospital Mardan and reported the matter to the effect that on 05.02.2012 he was busy in work as labor with mason in the mosque of Haji Abdur Rasheed, when suddenly Abdul Wadood son of Abdur Raziq and Asfandiar son of Taj Muhammad had exchange hot words with each other. On this, Asfandiar straight away went to his house and came back armed with Kalashinkove along with co-accused Niaz Ali and started firing at his nephew Abdul Wadood with Kalashinkove in order to commit his Qatl-i-Amd with their firing, his nephew got hit and died, while, a child namely Madina, who was playing near to the spot had also received injuries. Occurrence was witnessed besides him by one Abdul Awal son of Abdur Raziq. Motive was verbal altercation, as mentioned above. He charged the accused for the commission of Qatl-i-Amd of his nephew and injuring minor child Madina. His report was recorded in the shape of murasila and on the basis of which the subject FIR was registered.



Perusal of the record reveals that the complainant of the present case recorded his statement as PW-2 and admitted in his cross examination that on same date and time a cross case was also registered against them by Azimullah. He further stated that it was indiscriminate firing and he was present inside the mosque and had not seen as to who were firing from which side, as all of the assailants of both the parties were firing from upper storey of their house and he has not seen them. He also admitted that he does not want to prosecute the accused in instant case and do not charge them and has no objection on their acquittal.

Counsel for complainant abandoned PW Adul Awal to the effect that nowadays he is in Dubai and as disclosed to him by Abdur Raziq father of deceased that he is also not interested in the case.

So keeping in view the data available on record and statement of complainant/PW-2, there is no probability of the

Attested
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EXAMINER
Copying Department
Sessions Court Mardan

accused facing trial to be convicted even if the remaining evidence of the prosecution is recorded; hence by accepting the application under section 265-K Cr.P.C accused facing trial are acquitted of the charge leveled against them. Accused Asfandiar is in jail, be released forthwith if not required in any other case, whereas accused Niaz Ali is on bail, his bail bonds stand cancelled and his sureties are absolved accordingly from the liability of his bail bonds.

Case property be disposed of in accordance with law after expiry of period of appeal/revision.

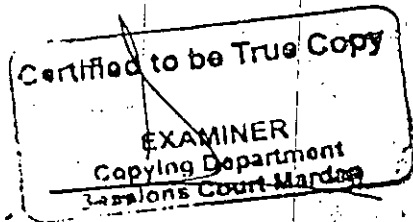
File be consigned to record room after completion and compilation.

Announced
28.10.2014



[Handwritten Signature]

(Miss Ambareen Navid)
Additional Sessions Judge-IV, Mardan



محمد نواز خان صاحب

Case No. 12742 Dt 30-10-14

Date of original copy prepared: 05-11-14

Date on which copy Examined: 05-11-14

No. of words: 02 P

Court Fee Stamp: _____

urgent fee: _____

Signed of Copyist: *[Signature]*

05-11-14

05/11/14

15

9

BEFORE THE SENIOR MEMBER BOARD OF REVENUE KPK PESHAWAR.

Subject:- Departmental Appeal against the Order dated 14-10-2014, of the Commissioner Mardan Division Mardan, whereby the appellant has been removed from service.

Respectfully Submitted:-

1. That the appellant was appointed as Assistant BPS-14, by the Commissioner Peshawar, vide Order dated 02-01-2009, he submitted Arrival, was transferred to Commissioner office Mardan and upon completion of probation period, his services were regularized vide Office Order dated 27-01-2011. (Copies of the Orders are enclosed as Annexure A & B).
2. That the appellant and was falsely implicated in a false murder case vide FIR No 62 dated 05-02-2012 of Police Station Saddar Mardan, and as such was unable to had attended the office. (Copy of FIR is enclosed as Annexure C).
3. That the appellant was issued show cause Notice on 19-08-2014, which was replied in detail explaining the true position (Copy of show cause Notice and reply are enclosed as Annexure D & E).
4. That the appellant applied for Bail Before Arrest on 17-09-2014, which was recalled on 13-10-2014. (Copy of the Order is enclosed as Annexure F).
5. That finally, the appellant was awarded the penalty of Removal from service by the Commissioner Mardan Division vide Office Order dated 14-10-2014. (Copy of the Office Order is enclosed as Annexure G).
6. That finally the appellant was acquitted of the charges by the Court of Competent jurisdiction vide Order and judgment dated 28-10-2014. (Copy of the Order & Judgment is enclosed as Annexure H).

Attested


[Signature]
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7. That the impugned Order dated 14-10-2014 of the Commissioner Mardan Division Mardan is against the law, facts and principles of justice on grounds interalia as follows:-

GROUND:-

- A. That the impugned order is illegal and void ab initio.
- B. That no charge sheet was communicated to the appellant.
- C. That no inquiry was conducted in the matter to has found out the true facts and circumstances.
- D. That the absence from duty was not willful and deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- E. That the appellant was falsely implicated in a false case, from which he has been acquitted by the Court of Competent jurisdiction, and as such is entitled to be reinstated in service.
- F. That the appellant did nothing that could amount to misconduct.
- G. That the impugned order is defective and as such not maintainable in the eyes of law.
- H. That the appellant was not afforded the opportunity of personal hearing.

Attested


Ae

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1. That the appellant has more than 5 years of service with unblemished service record.

It is therefore prayed that on acceptance of this appeal, the impugned Order dated 14-10-2014, of the Commissioner Mardan Division Mardan, may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Asfandiyar Khan

Dated:-11-11-2014.

o/c
Asfandiyar Khan Ex Office Assistant
Commissioner Office Mardan Division
Mardan S/O Taj Muhammad R/O
Khazana Dheri, P/O Khanjar Tehsil
and District Mardan.
CELL#0315 6086222

Dy NO 6459 / PS / S-MRDL

Date 11-11-2014

Attested

Signature

(Better Copy)

J/18

BEFORE THE SENIOR MEMBER BOARD OF REVENUE
KHYBER PAKHTUNKHWA

Asfandyar Khan Ex-Assistant Commissioner Office Mardan Vs Commissioner Mardan

Service Appeal No.16/2014

ORDER:-

Asfandyar Khan has assailed the order of Commissioner Mardan Division passed on October 14, 2014 vide which his services were terminated for willful absence of two and half years. On receipt of Appeal, Commissioner Mardan was asked to furnish comments which were provided on 27.11.2011 where after the appellant and representative of Commissioner Mardan were heard at length.

Brief acts of the case are that na FIR for murder was registered against the appellant on February 2, 2012 where after he absconded to evade arrest; resultantly he avoided attending office. When the matter of the nitrating of FIR came to the knowledge of Commissioner, Mardan, he placed the appellant under suspension and ordered a fact finding enquiry. The enquiry Officer (Sic) that the enquiry cannot be completed as the appellant is absconding and not attending the proceedings. The appellant was charge sheeted for willful absence by the (sic) the E&D proceedings were underway, the appellant scoured bail appeared for personal hearing. The commission after perusal of the enquiry report and hearing the appellant in person reached the conclusion that the appellant had willfully absented from duty as he made no effort to explain his inability to attend office and obtain leave and imposed major penalty of removal from service.

The appellant narrated the facts from registration of FIR to his release on bail, and stated that had he attended office he would have been arrested for an offence he had not committed. Therefore he had no alternate but to abstain from resuming duty. The Authorized Officer had not considered his difficulty while deciding the matter. He further drew attention to provisions of Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 which prescribes the procedure that needs to be adopted in case of willful absence.

The record presented by the representative of Commissioner Office does not speak of having sent notice of absence and direction to the appellant to resume duty within 15 days nor were cuttings from two newspapers provided to show that the subsequent notice had been published. It is also not clear at what stage the appellant joined the E&D proceedings.

In the circumstances the impugned order is set aside and Commissioner Mardan is instructed to reconsider the matter and to ascertain whether the procedure set out in Rule 7 had to be followed in the present case is not.

Sd/-
Senior Member

Announced
12-02-2015

A Hested
Sd/-

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J

BEFORE THE SENIOR MEMBER BOARD OF REVENUE
KHYBER PAKHTUNKHWA

Asfandyar Khan ex Assistant Commissioner Office Mardan Vs Commissioner, ~~Mardan~~
Service Appeal # 16/2014

ORDER

Asfandyar Khan has assailed the order of Commissioner Mardan Division passed on October 14, 2014 vide which his services were terminated for willful absence of two and half years. On receipt of appeal, Commissioner Mardan was asked to furnish comments which were provided on 27-11-2014 where after the appellant and representative of Commissioner Mardan were heard at length.

Brief facts of the case are that an FIR for murder was registered against the appellant on February 2, 2012 where after he absconded to evade arrest; resultantly he avoided attending office. When the matter of registration of FIR came to the knowledge of Commissioner Mardan, he placed the appellant under suspension and ordered a fact finding enquiry. The enquiry officer reported that the enquiry cannot be completed as the appellant is absconding and not attending the proceedings. The appellant was charge sheeted for willful absence; by the time the E&D proceedings were underway, the appellant secured bail and appeared for personal hearing. The Commissioner after perusal of the enquiry report and hearing the appellant in person reached the conclusion that the appellant had willfully absented from duty as he made no effort to explain his inability to attend office and obtain leave and imposed major penalty of removal from service.

The appellant narrated the facts from registration of FIR to his release on bail, and stated that had he attended office he would have been arrested for an offence he had not committed. Therefore he had no alternate but to abstain from resuming duty. The Authorized Officer had not considered his difficulty while deciding the matter. He further drew attention to provisions of Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 which prescribes the procedure that needs to be adopted in case of willful absence.

The record presented by the representative of Commissioner Office does not speak of having sent notice of absence and direction to the appellant to resume duty within 15 days nor were cuttings from two newspapers provided to show that the subsequent notice had been published. It is also not clear at what stage the appellant joined the E&D proceedings.

In the circumstances the impugned order is set aside and Commissioner Mardan is instructed to reconsider the matter and to ascertain whether the procedure set out in Rule 9 had to be followed in the present case or not.

[Signature]

Senior Member

Announced
12-02-2015

[Signature]
[Signature]

19



18/05/15

03/03/15

IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

K

Asfandiar Khan Versus Appellant

Commissioner Mardan Division Mardan Respondent

Case No.....
Dated of institution: 03/03/2015
Dated of Decision: 18/05/2015

DEPARTMENTAL APPEAL/REPRESENTATION OF
ASFANDIYAR EX-ASSISTANT OF THE OFFICE OF
COMMISSIONER MARDAN

ORDER:-

Brief facts of the case are that one Asfandiyar Khan ex-assistant of this office was terminated on 14/04/2014 from service for willful absence from the office since 02/02/2014. Against the said order dated 14/10/2014 the appellant went in appeal/representation before the Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar. After the trial/proceedings the Worthy SMBR, Khyber Pakhtunkhwa Peshawar remanded the case to reconsider the matter and to ascertain whether the procedure set out in rule 9 had to be followed in the present case or not. Brief facts are that an FIR for murder under section 302/324/34 PPC was registered against the present appellant on 5 February 2012 where after he absconded to evade arrest resultantly he absented himself from the office. On receiving the FIR from Police department the appellant was suspended vide this office order No.484-93/EA/ACR dated 08/02/2012. After suspension the then District Officer Revenue & Estate Mardan was appointed as enquiry Officer to dig out the facts.

The Enquiry Officer reported vide his letter NO.1790/DO(R&E) dated 23/02/2015 that the accused is absconder and enquiry proceedings could not be initiated. On 09/02/2014 vide office letter No. 2089/EA/ACR/2-1 sought latest position from District Police Office Mardan of the appellant/absconder, in response to which the District Police vide his letter No.4687/GB/Inv dated 15/09/2014 declared the appellant as absconder.

Appellant present with counsel and arguments heard. The case file as well as order of the Worthy SMBR, Khyber Pakhtunkhwa thoroughly perused.

Contd....P/2

See Page 146
22

Attested

22/05/15

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From perusal of record and drawing wisdom from the arguments it reveals that the order passed by the undersigned bearing No.2292/ACR/EA/2-1 dated 14/10/2014 is in accordance with law and facts. The appellant was charged for his willful absence from official duties w.e.f 05/02/2012 till date for which he was granted penalty in accordance with E&D Rules 2011 after adopting all codal formalities. So far rule 9 of Khyber Pakhtunkhwa Government Servant (Efficiency) and Discipline Rules 2011 is concerned. Ample opportunity was given to the appellant and proper show cause notice of his willful absence was given to the appellant on 19/08/2014 to which the appellant had replied in detail through one Mr. Said Rehman on 23/08/2014, it means that the appellant was well aware of the proceedings. The appellant was removed from service on account of his willful absence and willful absence is mis-conduct under E&D rules 2011 and is a valid ground for initiating the proceedings. The appellant was accorded Major Penalty of removal from service as envisaged under rule 9 of the E&D rules 2011. Since the appellant was served show cause notice to which he replied through a representative, therefore secondly mode of service i.e. publication in the newspaper, is out of question. Therefore the order bearing No.2292/ACR/EA/2-1 dated 14/10/2014 is maintained. No order as to costs.

File be consigned to record room after necessary completion and compilation.

Announced.
18/05/2015

Commissioner
Mardan Division, Mardan



No. 440 22/05/015
 Date of Application.....
 Name of Applicant..... U. S. Said
 Wards. 800 Fee..... 80
 Urgent Fee..... 20
 Sign of Copyist.....
 Date of Preparation.....

22/05/015

ATTESTED

[Signature]
 Examiner/Reader in
 Commissioner Court
 Mardan Division Mardan

22/05/015

Attested

[Signature]
 A. W.

21

Dy No 3754
PS/SMB/1
8/6/15

BEFORE THE SENIOR MEMBER BOARD OF REVENUE KPK PESHAWAR.

Subject:- Departmental Appeal against the Order 18-05-2015 of the Commissioner Mardan Division Mardan, whereby he has maintained Order dated 14-10-2014, whereby the appellant was removed from service.

"L"

Respectfully Submitted:-

1. That the appellant was appointed as Assistant BPS-14, by the Commissioner Peshawar, vide Order dated 02-01-2009, he submitted Arrival, was transferred to Commissioner office Mardan and upon completion of probation period, his services were regularized vide Office Order dated 27-01-2011. (Copies of the Orders are enclosed as Annexure A & B).
2. That the appellant was falsely implicated in a false murder case vide FIR No 62 dated 05-02-2012 of Police Station Saddar Mardan, and as such was unable to have attended the office. (Copy of FIR is enclosed as Annexure C).
3. That the appellant was issued show cause Notice on 19-08-2014, which was replied in detail explaining the true position. (Copy of show cause Notice and reply are enclosed as Annexure D & E).
4. That the appellant applied for Bail Before Arrest on 17-09-2014, which was recalled on 13-10-2014. (Copy of the Order is enclosed as Annexure F).
5. That finally, the appellant was awarded the penalty of Removal from service by the Commissioner Mardan Division vide Office Order dated 14-10-2014. (Copy of the Office Order is enclosed as Annexure G).
6. That finally the appellant was acquitted of the charges by the Court of Competent jurisdiction vide Order and judgment dated 28-10-2014. (Copy of the Order & Judgment is enclosed as Annexure H).

Attest

Signature
AEO

7. That after acquittal the appellant filed departmental appeal before your honor on 11-11-2014, and vide Order date 12-02-2015, your honor was pleased to set aside the impugned order dated 14-10-2014, and Commissioner Mardan was instructed to reconsider the matter and to ascertain whether the procedure set out in Rule 9 had to be followed in the case or not. **(Copy of Departmental appeal & Order dated 12-02-2015 are enclosed as Annexure I & J).**

8. That finally vide Order dated 18-05-2015 the Commissioner Mardan, maintained his own Order, dated 14-10-2014. **(Copy of the Order is enclosed as Annexure K).**

9. That the impugned Order dated 14-10-2014 and Order date 18-05-2015 of the Commissioner Mardan Division Mardan are against the law, facts and principles of justice on grounds interalia as follows:-

GROUND:-

- A. That the impugned orders are illegal and void ab initio.

- B. That the appellant has not been treated according to law and rules and the Commissioner Mardan has badly violated the procedure set forth by the law and rules.

- C. That no charge sheet was communicated to the appellant.

- D. That no inquiry was conducted in the matter to has found out the true facts and circumstances.

- E. That the absence from duty was not willful and deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.

AAJ

[Signature]

- F. That the appellant was falsely implicated in a false case, from which he has been acquitted by the Court of Competent jurisdiction, and as such is entitled to be reinstated in service.

- G. That your honor had set aside the impugned order dated 14-10-2014, and had remanded the case to the Commissioner Mardan just to ascertain as to whether the procedure set out in Rule 9 of the E & D Rules had to be followed or not, as such the order dated 18-05-2015 amounts to exceeding the authority.

- H. That even otherwise the order date 14-10-2014 of the Commissioner Mardan was set aside by your honor and he had no authority to maintain an order which was already set aside by the appellate authority i.e by your honor, as such the order dated 18-05-2015 is not maintainable in the eyes of law.

- I. That even the Commissioner Mardan violated the order of your honor as after setting aside the impugned order dated 14-10-2014, the appellant was to be reinstated in service but neither the appellant was reinstated in service nor he spoke a single word about your order which as such is still in field, as the Commissioner Mardan has no authority to set aside the order of your honor being appellate authority.

- J. That the appellant did nothing that would amount to misconduct and he has been awarded major penalty in violation of law, rules and dictums of the superior Courts.

- K. That the impugned orders are defective and as such not maintainable in the eyes of law.

- L. That the appellant was not afforded the opportunity of personal hearing.

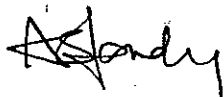
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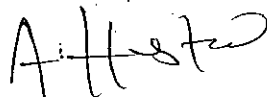
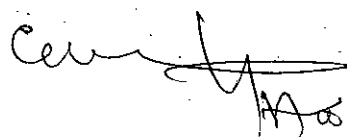
24

M. That the appellant has more than 5 years of service with unblemished service record.

It is therefore prayed that on acceptance of this appeal, the impugned Order dated 18-05-2015 & Order dated 14-10-2014, of the Commissioner Mardan Division Mardan, may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Dated:-08-06-2015.


Asfandyar Khan
Ex Office Assistant
Commissioner Office Mardan Division
Mardan S/O Taj Muhammad R/O
Khazana Dheri, P/O Khanjar Tehsil
and District Mardan.
CELL#0315 6086222

ASI ANDYAR EX OFFICE ASSISTANT OFFICE OF
COMMISSIONER, MARDAN DIVISION
VERSUS
COMMISSIONER, MARDAN DIVISION MARDAN

25

CASE NO. 08/2015

ORDER
09.06.2015

Departmental Appeal / representation against the office order dated 18.05.2015 of Commissioner, Mardan Division, presented by the appellant today. Call for comments of Commissioner, Mardan Division for 25.06.2015.

[Signature]

Senior Member

25.06.2015

Appellant absent. Representative of Commissioner, Mardan present and handed over comments. P.O is busy in other important official work. File to come up on 09.07.2015.

9-7-2015.

Appellant and representative of Commissioner Mardan present and heard at length. The representative of Commissioner explained that provisions of Rule 9 are of the K.P. (Efficiency and Disciplinary) Rules, 2011 are not attracted as the appellant had put in appearance in response to show cause notice issued to him. The representative further explained that application of Rule 7 ibid does not require reducing in writing order to dispense with enquiry. As the appellant had been absconding it is nothing but wilful absence. If he could not have appeared ^{of his} himself for duty because of absconcion, he could have applied through some one for obtaining leave.

As the appellant had responded to show cause notice by submitting his response, he

ATTESTED

[Signature]
Reader To 9/7/15
SMBR
Khyber Pakhtunkhwa

[Signature]
SMBR
Khyber Pakhtunkhwa

was given opportunity to defend himself and explain why he could not cover his absence (period of absconcing) by applying/obtaining leave, there seems no justification to hold an enquiry whether he was absent for the period in question or not.

In light of above, I see no merit in the departmental appeal, which is dismissed.

Announced.

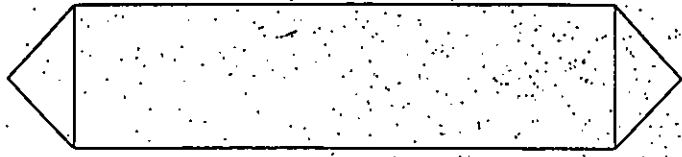
Mr. Asif
SMBR.

ATTESTED

11/1
Reader To
SMBR

9-7-13
Khyber Pakhtunkhwa

بعدالت مہاجرت - سرویس لبریری کے نام سے



2015ء منجانب استیلا

اسمدر بار - بنام گورنمنٹ وکری

موضوع

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
 آن مقام لائسنس ہولڈر کیلئے فضل شاہ ہمنڈ الیو کیس
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
 مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے
 اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
 سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
 گے۔ کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھ دیا کہ سند رہے۔

AD 10

Attest

المرقوم 10 ماہ جولائی 2015ء

Handwritten signature

Accept

العہدہ العہدہ

کے لئے منظور ہے۔

Handwritten signature

مقام

(6)

BEFORE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Appeal No 830/ 2015

Asfandyar Khan Petitioner

Versus

S.M.B.R, KPK etc..... Respondents

Parawise comments/Written reply on behalf of respondent No 1 & 2 is as under:

PREMILINARY OBJECTIONS:

1. That the Appellant has got no cause of action.
2. That the present Appeal is time barred.
3. That the Appellant has not come to this tribunal with clean hands.
4. That the Appellant has concealed material facts from this Office.
Hence the appeal is liable to be dismissed.

Joint Para wise Comments by Respondent No. 1&2:

1. Correct to the extent that the appellant was appointed as Assistant (BPS-14) by Commissioner Peshawar vide order No PS/Commr/PSH/1-2/2008/21 dated 02-01-2009. However he along with six other Officials were placed at the disposal of this Office for adjustment against the vacant posts, vide order No AC(Rev)/Pesh/1-2/2008/529 dated 05-03-2009. (**Annexure- A**).
2. Correct to the extent that FIR No 62 dated 05-02-2012 has been lodged against the appellant. Consequent upon the FIR the appellant was suspended vide this Office order No 484-93/EA/ACR dated 08-02-2012. (**Annexure-B**) and the then District Officer (Revenue and Estate), Mardan was appointed as enquiry Officer to dig out the facts. The enquiry Officer reported vide his letter No 1790/DO(R&E) dated 23-02-2012 that the accused is absconder and enquiry proceedings could not be initiated (**Annexure-C**). This fact was even endorsed by local police while requesting arrest of the appellant and handing him over to the District Police vide his letter No 417/GB dated 10-02-2012 (**Annexure-D**). The period of suspension was extended ^{from} 08-05-2012 to 08-08-2012 on account of willful absence of Appellant vide this Office order No 2107-16/EA/ACR/2-1/V-4 dated 27-06-2012 (**Annexure-E**) where after this Office vide his letter No 3254/EA/ACR/2-1 dated 16-10-2012 (**Annexure F**) sought latest position from District Police Officer, Mardan followed by First reminder vide Office No 2089/EA/ACR/2-1 dated 02-09-2014 (**Annexure G**) in response to

which the District Police vide his letter No 4687/GB/Inv dated 15-9-2014 declared the appellant as absconder (**Annexure H**).

3. Correct to the extent that a show cause notice was issued to which the petitioner/appellant replied through one Mr. Said Rehman and that is why secondary mode of service that is publication in two newspapers, was dispensed with.
4. No Comments.
5. Correct.
6. No Comments.
7. Incorrect. The order 14-10-2014 of this Office is in accordance with law and facts. The appellant was charged for his willful absence from the office w.e.f 05-02-2014 till date (two and half years) for which he was granted penalty in accordance with E & D rules 2011 after adopting all the codal formalities. Furthermore in the light of the directions given in a departmental appeal by SMBR, this office has revisited its decision dated 18-5-2015 on 14-10-2014 but concluded that there is no illegality or irregularity observed in the afore mentioned order. The petitioner/appellant was properly charged for his willful absence, a show cause notice was issued and after observing all the codal formalities, as envisaged in rule-9 of E&D Rule, 2011; the petitioner /appellant was proceeded against.
8. Correct.
9. Incorrect. The order dated 18-5-2015 and the subsequent order dated 14-10-2014 are out come of due process of law. No illegality or irregularity has been observed in the proceedings and both the orders are based on law, facts and in accordance with principles of natural justice.
10. Incorrect as explained in the above paras.


GROUND:


- a- Incorrect. The appellant was removed from service on account of his willful absence.
- b- Incorrect. Ample opportunity was given to the appellant to show cause of his willful absence to which he replied in detail through one Mr. Said Rehman.
- c- Incorrect. The enquiry is dispensed with in case of willful absence under rule 9 of E & D rules 2011. No such enquiry is required to be conducted. The case of appellant falls within the cases where enquiry is dispensed with as given in Rule-7 of E&D Rules, 2011.
- d- Incorrect. The appellant has absented himself deliberately and there was no compelling circumstances. Instead of absenting himself he should have presented himself voluntarily for operation of law.

- e- As above.
- f- No comments.
- g- Correct to the extent that order dated 14-10-2014 was remanded.
- h- Incorrect. The order is an outcome of due process of law
- i- Incorrect. The order dated 14-10-2014 of this office is in accordance with law and facts. The appellant was charged for his willful absence from the office w.e.f 5-2-2012 till date (two years and six months) for which he was granted penatly in accordance with E&D rules, 2011 after adopting all the codal formalities. Furthermore in the light of the directions given in a departmental appeal by SMBR , this office has revisited its decision dated 14-10-2014 but concluded that there is no illegality or irregularity observed in the afore mentioned order. The petitioner/appellant was properly charged for his willful absence, a show cause notice was issued and after observing all the codal formalities, as envisaged in rule-9 of E&D rules, 2011, the petitioner/appellant was proceeded against.
- j- Incorrect. Willful absence is a misconduct under E & D rules 2011 and is a valid ground for initiation of proceedings. Likewise absconding himself from legal action/ Arrest is also a misconduct on the part of a Government servant under conduct rules 1987.
- k- As in para-j.
- l- Incorrect. Ample opportunity was given to the appellant but he did not bother to appear in person.
- m- No comments.

Furthermore review petition of the appellant has already been dismissed vide order No 3160/EA/ACR/2-1 dated 07-11-2014
(Annexure-I)

Therefore it is hereby requested that the Appeal of the appellant is baseless against the law hence liable to be dismissed.


Senior Member Board of Revenue
Khyber Pakhtunkhwa.
(Respondent No.1)


Commissioner
Mardan Division Mardan
(Respondent No.2)

(5) A 7

**COMMISSIONER
PESHAWAR DIVISION PESHAWAR**

12th the Mall Peshawar Cantt (tel.9211324 fax 9214655)

Dated Peshawar the 2nd Jan: 2009

OFFICE ORDER.

No.PS/Commr/Pesh/1-2/2008/

On the recommendation of Departmental Selection Committee Mr. Asfandyar Khan S/O Taj Muhammad r/o Village Khazana Dheri, P.O. Khanajar Tehsil & District Mardan is hereby appointed as Assistant (BPS-14) on temporary basis on usual pay and allowances admissible under the rules against the vacant post subject to the terms & conditions mentioned below:-

TERMS AND CONDITIONS.

1. He will get pay at minimum of BPS-14 (Rs.4920-380-16320) including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
2. He will produce medical fitness certificates from Medical Superintendent, Services Hospital Peshawar.
3. He will be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
4. He will, for all intents and purposes, be Civil Servant except pension/commutation/gratuity. In lieu of pension and gratuity, he will be entitled to receive such an amount contributed by him towards Community Provident Fund (CPF) alongwith contributions made by Govt. to his account in the said fund, in the prescribed manner.
5. His employment in the office of Commissioner Peshawar is purely on temporary basis and his services will be liable to terminate at any time without assigning any reason before the expiry of the period of probation/extended period of probation. If his work during this period was not found satisfactory in such an event, he will be given a month's notice of termination from service or one month pay in lieu thereof. In case he wishes to resign at any time a month's notice shall be necessary or in lieu thereof one month pay shall be forfeited.
6. He shall initially be on probation for a period of two years extendible upto 3 years.
7. If the above terms & conditions are accepted to him, he should report to the office of Commissioner Peshawar Division Peshawar on or before 16.01.2009, failing to which the order of appointment shall stand null and void.
8. His services are transferable anywhere in the Divisional level.

-Sd-

COMMISSIONER PESHAWAR

Dated 02/01/2009

Endst: No.PS/Commr/Peshawar/1-2/2008. /21

Copy forwarded to:-

1. The Senior Member Board of Revenue NWFP, Peshawar
2. The Accountant General NWFP, Peshawar.
3. The District Coordination Officer, Peshawar.
4. The Section Officer (FATA), Home & TAs Department.
5. The Assistant to Commissioner (P/D), Peshawar.
6. The Budget Assistant O/O Commissioner, Peshawar.
7. Mr. Asfandyar Khan S/O Taj Muhammad r/o Village Khazana Dheri, P.O. Khanajar Tehsil & District Mardan
8. Personal file/office order file.

Assistant to Commissioner (Revenue)

Attest

[Signature]

Attest

To,

68B

The Commissioner Peshawar Division,
Peshawar.

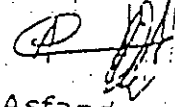
Subject : ARRIVAL REPORT.

Sir,


In compliance of Office Order No. PS/Commr/Pesh/1-
2/2008/21 dated 02.01.2009, I hereby submit my arrival report for duty
today on 06.01.2009 (F.N).

Thanks.

Yours Obediently,



(Asfandyar Khan)
Assistant.

Attested


تاریخ
۱۲۳۵

بسم الله الرحمن الرحيم
 این کتاب در علم طب است
 که در روزگار ما بسیار نایاب است
 و در کتابخانه من در سال ۱۲۳۵
 کشف شد و من آن را در این کتاب
 درج نمودم تا آنکه در دست
 دیگران نیفتد و این کتاب
 در روزگار ما بسیار نایاب است
 و در کتابخانه من در سال ۱۲۳۵
 کشف شد و من آن را در این کتاب
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 کشف شد و من آن را در این کتاب
 درج نمودم تا آنکه در دست
 دیگران نیفتد و این کتاب

MA S De Sudon
 105 1001012

این کتاب در علم طب است که در روزگار ما بسیار نایاب است و در کتابخانه من در سال ۱۲۳۵ کشف شد و من آن را در این کتاب درج نمودم تا آنکه در دست دیگران نیفتد و این کتاب در روزگار ما بسیار نایاب است و در کتابخانه من در سال ۱۲۳۵ کشف شد و من آن را در این کتاب درج نمودم تا آنکه در دست دیگران نیفتد و این کتاب



OFFICE OF THE COMMISSIONER MARDAN DIVISION MARDAN

(9) D
12/

SHOW CAUSE NOTICE

I Mr. Khalid Hussain, Commissioner Mardan Division Mardan, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) rules, 2011, do hereby serve you, Mr. Asfandiyar Khan, Office Assistant, as follows:

1. Whereas, you willfully remained absent from your official duties since 05-02-2012 without any leave/permission:

Therefore I am satisfied that you are habitual absentee from official duty which falls within the preview of "Misconduct".

2. As a result thereof, I as competent authority, have tentatively decided to impose upon you major penalty under rule-IV of the said rules.

3. you are thereof, required to immediately attend the office and to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 10 days, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

(KHALID HUSSAIN)
COMMISSIONER
MARDAN DIVISION MARDAN

CC: PS to Commissioner Mardan Division Mardan.

Official Concerned

Assistant to Commissioner (Rev.)
Mardan Division Mardan.

Attested

ADJ

2031 / RCR / BA
Date: 17-8-2014

51

ADIS-77

No. of Order or Proceedings
Date of Order or Proceedings
Order or other proceedings with signature of Judge or Magistrate and where necessary

17-09-2014
24/9/14
10.14
copy put up for arguments on 29/10/14
09.10.2014

BBA petition submitted by counsel for petitioner, accused
Accused/petitioner Asfandiar son of Taj Muhammad r/o Khazana Dher
Mardan along with his counsel present.

Petitioner seeks his pre-arrest bail in case FIR No. 62 (dated 05.02.20) under
sections 302/324/34 PPC of police station Saddar, Mardan.

Content: malafide and false implication. The application is supported by
affidavit. In the absence of record, petitioner is admitted to be interim pre-arrest
in the sum of Rs. 100,000/- with two sureties each in the like amount to the
satisfaction of this court.

Petitioner is directed to join investigation before date fixed. Notice no record
for 24/9/2014

Miss Ambareen Navid
Additional Sessions Judge - IV Mardan

Accd-Petitioner on ad interim bail present
SPP present. Complt in person present. Put up for
arguments on 1.10.14.

ASJ, IV, Mardan.

Accd-petitioner on ad interim bail present
SPP present. Complainant present. record received.
Complt requested for adjournment to engage counsel
Put up for arguments on 29/10/14

ASJ, IV, Mardan.

Accused/petr. on ad interim bail
present. Complainant along with counsel
present. Counsel for the Complainant
submitted v.nama and requested
for adjournment which is allowed.
Put up for arguments on 13.10.2014

Accused/petitioner on ad interim bail present. Counsel for accused/petitioner, counsel for complainant and Dy. PP for the state present. Arguments heard and record perused.

Accused/petitioner Asfandiar, son of Taj, Muhammad, r/o Khazana Dheri, District Mardan seeks confirmation of pre-arrest bail in case FIR No.62 dated 05.02.2012 under sections 502/324/307 PPC of police station Saddar, Mardan, already extended to the petitioner vide order dated 17.09.2014.

Brief facts of the case are that Abdul Wahid son of Abdur Rasheed brought the dead body of his nephew Abdul Wadood and also brought injured child namely Madina with the help of co-villagers and relatives to the casualty hospital Mardan and reported the matter to the effect that on 05.02.2012 he was busy in work as labor with mason in the mosque of Hajj Abdur Rasheed, when suddenly Abdul Wadood son of Abdur Raziq and Asfandiar son of Taj, Muhammad/accused petitioner had exchange hot words with each other. On this accused/petitioner straight away went to his house and came back armed with Kalashinkove along with co-accused Niaz Ali and started firing at his nephew Abdul Wadood with Kalashinkove in order to commit his Qatl-e-Amd with effect firing, his nephew got hit and died, while a child namely Madina who was playing near to the spot had also received injuries. Occurrence was witnessed besides him by one Abdul Awal son of Abdur Raziq. Motive was verbal altercation, as mentioned above. He is charged the accused for the commission of Qatl-e-Amd of his nephew and injuring minor child Madina. His report was recorded in the shape of murasala and on the basis of which the subject FIR was registered.

Perusal of the record reveals that no malafide on the part of the complainant or prosecution has been established on record and there is no evidence on record which may reveal the false implication of the accused/petitioner. No exceptional ground exist to grant extra-ordinary relief of ad interim pre-arrest bail at this stage as such, the BPA of the accused/petitioner is not arguable for the purpose of bail, hence the same is dismissed and the ad interim pre-arrest bail already granted to accused/petitioner vide order dated 17.09.2014 is hereby recalled.

Requisitioned records be sent forthwith to quarter concerned and file of this court be consigned to record room after completion and compilation.

16/10/14

16-10-14
16-10-14
16-10-14
16-10-14
16-10-14

Announced
14.10.2014

(Miss Amreen Avid)
Additional Sesss Judge-IV, Mardan



Handwritten signature and initials.

13

917



OFFICE OF THE COMMISSIONER MARDAN DIVISION MARDAN

Attention:
Fazal Shah Mahmood
Cell: 0301-8804841

OFFICE ORDER

No. 2292 /ACR/EA/2-1

Dated Mardan the 14/10-2014

1. Whereas you Mr. Asfandiyar Khan, Office Assistant have remained willfully absent from duty since 05-02-2012, without any leave/permission which falls within the preview of misconduct
2. Whereas a show cause notice was issued to you to resume the duty and you were directed to appear in person for personal hearing to which you submitted a reply through a representative and not even bothered to appear in person.
3. Whereas it was disclosed to this office through local police vide letter No. 417/013 dated 10.2.2012 that F.I.R No.62 dated 05.02.2012 u/s 302/324/34 have been lodged against you and you have reported through police vide letter No.468/703B dated 15.9.2014 to have absconded yourself from legal action/arrest and have not yet surrendered.
4. Whereas you have concealed aforesaid facts from this office which is a misconduct on your part.
5. Whereas you could not give any cogent and convincing reason in your reply for your willfull absence for more than two & half years.
6. Consequent upon the aforementioned facts; the undersigned being competent authority is pleased to impose upon you Mr. Asfandiyar Khan, Office Assistant Major penalty of Removal from Service under Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011.

(Signature)
 (Khalid Hussain)
 Commissioner
 Mardan Division Mardan
 (Competent Authority)

Copy forwarded to:

- 1- Secretary-I, Board of Revenue, Govt of Khyber Pakhtunkhwa, Peshawar
- 2- Deputy Commissioner Mardan.
- 3- Deputy Commissioner Swabi.
- 4- District Comptroller of Accounts, Mardan.
- 5- PS to Commissioner Mardan Division Mardan.
- 6- Finance Assistant (local).
- 7- Official concerned.

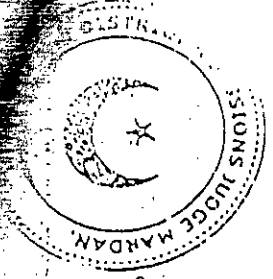
Abtoho
Certified
AAW

(Signature)
 (Qaisar Khan)
 Assistant to Commissioner (Rev)
 Mardan Division Mardan

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نیا علی کے خلاف قاتل کیس میں نوٹس
مقررہ 28/10/14
مقررہ 20/6/12
مقررہ 06/5/14
05/11/14

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3.10.2014



Accused Niaz Ali present on bail and accused Asfandiar produced in custody. Supplementary challan of accused Asfandiar received, placed on file.

Arguments on application under section 265-K Cr.P.C heard and record perused.

Brief facts of the case are that Abdul Wahid son of Abdul Rashid brought the dead body of his nephew Abdul Wadood and also brought injured child namely Madina, with the help of co-villagers and relatives to the casualty hospital Mardan and reported the matter to the effect that on 05.02.2012 he was busy in work as labor with mason in the mosque of Haji Abdul Rashid, when suddenly Abdul Wadood son of Abdul Raziq and Asfandiar son of Taj Muhammad had exchange hot words with each other. On this, Asfandiar straight away went to his house and came back armed with Kalashinkove along with co-accused Niaz Ali and started firing at his nephew Abdul Wadood with Kalashinkove in order to commit his Qatl-i-Amd with their firing, his nephew got hit and died, while, a child namely Madina, who was playing near to the spot had also received injuries. Occurrence was witnessed besides him by one Abdul Awal son of Abdul Raziq. Motive was verbal altercation, as mentioned above. He charged the accused for the commission of Qatl-i-Amd of his nephew and injuring minor child Madina. His report was recorded in the shape of murasila and on the basis of which the subject FIR was registered.

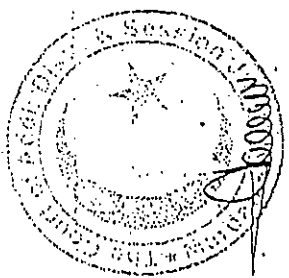
Perusal of the record reveals that the complainant of the present case recorded his statement as PW-2 and admitted in his cross examination that on same date and time a cross case was also registered against them by Azimullah. He further stated that it was indiscriminate firing and he was present inside the mosque and had not seen as to who were firing from which side, as all of the assailants of both the parties were firing from upper storey of their house and he has not seen them. He also admitted that he does not want to prosecute the accused in instant case and do not charge them and has no objection on their acquittal.

Counsel for complainant abandoned PW Adul Awal to the effect that nowadays he is in Dubai and as disclosed to him by Abdul Raziq father of deceased that he is also not interested in the case.

So keeping in view the data available on record and statement of complainant/PW-2. there is no probability of the

Attested
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Adw

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EXAMINER
Copying Department
Sessions Court Mardan



accused facing trial to be convicted
of the prosecution is recorded
under section 265-K Cr.P.C
the charge leveled against them
released forthwith if not required
accused Niaz Ali is are on bail, his
his sureties are absolved accordingly
bonds.

Case property be disposed of in accordance
expiry of period of appeal/revision.

File be consigned to record room after
compilation.

Announced
28.10.2014



(Signature)
(Miss Ambarcen Navid)
Additional Sessions Judge-IV, Mardan

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EXAMINER
Copying Department
Sessions Court Mardan

عمر نواز صاحب

Case No. 12742 Dt 30-10-14

Date of copy prepared 05-11-14

Date on which copy Examined 05-11-14

No. of words 02 P

Court fee stamp

urgent fee

Signed of Copyist *(Signature)*

05-11-14

05/11/14

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BEFORE THE SENIOR MEMBER BOARD OF REVENUE KPK PESHAWAR.

Subject:- Departmental Appeal against the Order dated 14-10-2014, of the Commissioner Mardan Division Mardan, whereby the appellant has been removed from service.

Respectfull y Submitted:-

1. That the appellant was appointed as Assistant BPS-14, by the Commissioner Peshawar, vide Order dated 02-01-2009, he submitted Arrival, was transferred to Commissioner office Mardan and upon completion of probation period, his services were regularized vide Office Order dated 27-01-2011. (Copies of the Orders are enclosed as Annexure A & B).
2. That the appellant and was falsely implicated in a false murder case vide FIR No 62 dated 05-02-2012 of Police Station Saddar Mardan, and as such was unable to had attended the office. (Copy of FIR is enclosed as Annexure C).
3. That the appellant was issued show cause Notice on 19-08-2014, which was replied in detail explaining the true position (Copy of show cause Notice and reply are enclosed as Annexure D & E).
4. That the appellant applied for Bail Before Arrest on 17-09-2014, which was recalled on 13-10-2014. (Copy of the Order is enclosed as Annexure F).
5. That finally, the appellant was awarded the penalty of Removal from service by the Commissioner Mardan Division vide Office Order dated 14-10-2014. (Copy of the Office Order is enclosed as Annexure G).
6. That finally the appellant was acquitted of the charges by the Court of Competent jurisdiction vide Order and judgment dated 28-10-2014. (Copy of the Order & Judgment is enclosed as Annexure H).

Attested

[Signature]
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7. That the impugned Order dated 14-10-2014 of the Commissioner Mardan Division Mardan is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND:-

- A. That the impugned order is illegal and void ab initio.
- B. That no charge sheet was communicated to the appellant.
- C. That no inquiry was conducted in the matter to have found out the true facts and circumstances.
- D. That the absence from duty was not willful and deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- E. That the appellant was falsely implicated in a false case, from which he has been acquitted by the Court of Competent jurisdiction, and as such is entitled to be reinstated in service.
- F. That the appellant did nothing that could amount to misconduct.
- G. That the impugned order is defective and as such not maintainable in the eyes of law.
- H. That the appellant was not afforded the opportunity of personal hearing.

Attested


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1. That the appellant has more than 5 years of service with unblemished service record.

It is therefore prayed that on acceptance of this appeal, the impugned Order dated 14-10-2014, of the Commissioner Mardan Division Mardan, may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Asfandyar Khan

Dated:-11-11-2014.

Asfandyar Khan Ex Office Assistant
Commissioner Office Mardan Division
Mardan S/O Taj Muhammad R/O
Khazana Dheri, P/O Khanjar Tehsil
and District Mardan.
CELL#0315 6086222

o/c

Dy No 6459 / PS / S-MARD

Date 11-11-2014

Attested

Signature

POWER OF ATTORNEY

In the Court of Khyber Pakhtun Khwa Sonnie Topal
Asfandiyar Khan

} For Mosh
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

S.M.B.R. and others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

and Sajid Amin Adil my true and lawful attorney, for me in my same and on my behalf to appear at propr to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Asfandiyar Khan
Sajid Amin Adil

Ijaz Anwar
Advocate High Courts & Supreme Court of Pakistan

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No: 1266 /ST

Dated 9 / 8 / 2016

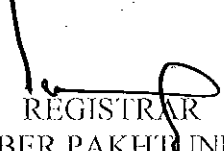
To

The Commissioner,
Mardan Division Mardan.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 3.8.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.