



The
PESHAWAR HIGH COURT
Peshawar

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Most Immediate
(Court matter)

No 5651 /Admn

Dated 27/05/2023.

To

**The District & Sessions Judge,
Swabi.**

Subject: **Service Appeals No. 1531/2022.**
Waqas Masih.... Vs... PHC & others.

Dear Sir,

Enclosed please find herewith joint para-wise comments, in original, for submission before Hon'ble Tribunal after doing the needful, at earliest, please.

You are further requested to share a copy of fair comments along with annexures with this office for record, via email at litigationwingphc@gmail.com.

Yours Sincerely,


(Aabid Sarwar)
ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR

Endst: No. _____ /Admn:

Dated Peshawar _____ / _____ /2023.

Copy for information to learned Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

(Aabid Sarwar)
ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR.

Inst No :- 6040
Date :- 15/6/2023

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

Service Appeal No.1531/2022

Waqas Masih Appellant

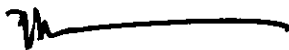
...Versus...

District & Sessions Judge, Swabi & others.....Respondents

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Respondent No.1



Muhammad Rauf Khan)
District & Sessions Judge, Swabi

Respondent No. 2



Registrar,
Peshawar High Court, Peshawar

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

Service Appeal No.1531/2022

Waqas Masih Appellant

...Versus...

District & Sessions Judge, Swabi & others.....Respondents

Subject: COMMENTS ON BEHALF OF RESPONDENTS NO 1 &

2

Respectfully Sheweth,

Preliminary Objections:-

1. The appellant has got no cause of action.
2. The appellant is estopped to sue by his own conduct.
3. The Hon'ble Peshawar High Court, Peshawar had sent the Wakalat-namas of candidates who had applied for the post of Additional District & Sessions Judges for verification. During the verification process, the attested copies of the Wakalat-namas issued to Syed Mubashir Shah Advocate in certain cases i.e. 17-SPL of 2020 "State vs Rahman Ullah", 32-SPL of 2010, "State vs Asad Zaman", 22-SPL of 2012, State vs Nizar Ali", 112/SC of 2009 "State vs Zebar", 8/6 of 2022, "Aziz-ur-Rahman vs SHO etc" could not be traced out from the relevant case files. Thereafter, the predecessor in office of this court directed learned AD&SJ-II Swabi for fact finding inquiry who vide order dated 23.06.2016

(Annexure-A), after recording statements of officials of Sessions Record Room, recommended the matter for full-fledged inquiry.

4. That in light of fact finding inquiry, charge sheet dated 24.03.2017 (Annexure-B & C) were issued to Imran Ullah Junior Clerk and Waqas Masih Sweeper who submitted their replies on 31.03.2017 (Annexure-D & E) and vide order dated 12.04.2017 (Annexure-F) learned AD&SJ-IV Swabi was appointed as Inquiry Officer.
5. That after full-fledged inquiry, learned AD&SJ-IV Swabi/Inquiry Officer submitted inquiry report on 04.03.2021 (Annexure-G) to the competent authority. Vide order dated 18.03.2021 (Annexure-H) while concurring with the findings of Inquiry Officer, Imran Ullah Junior Clerk has been absolved from the disciplinary proceedings and show-cause notice (Annexure-I) was issued to the appellant.
6. That thereafter Waqas Masih/Appellant submitted his reply (Annexure-J) and the accused/official desired for personal hearing, whereafter, opportunity of being heard was provided to the appellant. During personal hearing, the accused official/appellant admitted his signatures on the disputed Wakalat-namas. He also submitted that Junior Clerk Imran Ullah has not signed the disputed Wakalat-namas. This fact is evident from the order sheet dated 02.06.2021 in court file No. 33/Admn of 2021 (Annexure-K). After considering the inquiry report, reply to show-cause notice and personal hearing, vide order dated 26.06.2021 (Annexure-L) the competent authority imposed minor penalty of

withholding increments for 02 years against the accused official/appellant.

7. The appellant remained in deep slumber after the impugned order and filed Mercy Petition on 13.08.2021 (Annexure-M) which was forwarded to Hon'ble Peshawar High Court, Peshawar vide this office letter No. 8577/(F-185)/D&SJ dated Swabi the: 16.08.2021 (Annexure-N). If this mercy petition is treated as departmental appeal/representation then too, the same was filed beyond period of limitation as provided under section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.
8. That Notice of filing of departmental appeal was received in this office on 09.08.2021 which is too beyond period of limitation (Annexure-O).
9. The appeal in hand is hopelessly time-barred. The reasons mentioned in the application for condonation of delay is nothing but just a lame excuses. The appellant put appearance in the proceeding and he submitted reply in court file No.33/Admn of 2021 and as such he was well aware of the disciplinary proceedings initiated against him.
10. The appellant was found guilty during fact finding inquiry as well as in departmental inquiry as he had admitted during the inquiry that he had signed the disputed Wakalat-Namas. Moreso, keeping in view his dependent status and service record, minor penalty of withholding increments for two years was awarded to him.

Para-wise Comments:-

1. Para-1 is correct to the extent of appointment of appellant but the plea of appellant that he performed his duty honestly and with full devotion is incorrect.
2. Para-2 is correct to the extent of posting, issuance of Show-cause notice and replies thereof.
3. Para-3 is correct to the extent of issuance of charge sheet. However, there is nothing on the case file to suggest that the appellant with the connivance of Imran Ullah Junior Clerk submitted his reply.
4. Para-4 is correct to the extent of recommendation of Inquiry Officer for exoneration of Imran Ullah Junior Clerk. The remaining para is incorrect, hence, denied. Proper departmental inquiry was conducted and full opportunity including cross examination of inquiry witnesses as well as personal hearing was afforded to the appellant and the findings recorded by the Inquiry Officer is self-explanatory.
5. Para-5 is correct.
6. Para-6 is incorrect hence, denied. Opportunity of personal hearing was afforded to the appellant and the entire record was considered before imposition of penalty against the accused official/appellant.
7. Para-7 is correct to the extent that departmental appeal was filed by the appellant but the same was time-barred.
8. Para-8 is totally incorrect, hence, denied. The competent authority after considering the recommendations of inquiry officer, awarded minor punishment to the appellant vide the impugned order.

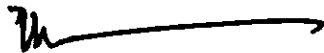
Grounds:-

- Ground "A" is incorrect, hence, denied.
- Ground "B" is incorrect, hence, denied. The appellant was treated according to law, rules and regulations. The fundamental rights of the appellant were not violated.
- Ground "C" is incorrect, hence, denied. During personal hearing, the accused official/appellant had admitted that he had signed the disputed Wakalat-namas, thus he had admitted his guilt.
- Ground "D" is correct to the extent that being sweeper, the appellant was performing duties in Sessions Court. The appellant had issued the attested copies of disputed Wakalat-Namas in a stereotype manner.
- Ground "E" is correct to the extent of various stages of obtaining attested copies but the remaining para is incorrect, hence, denied. The appellant was under an immediate obligation to check and tally the Wakalat-Namas with the original file before issuing its attested copies. The punishment was awarded to the appellant on the basis of his own admission before the Inquiry Officer during inquiry proceedings as well as before the competent authority during his personal hearing.
- Ground "F" is incorrect, hence, denied.
- Ground "G" is correct to the extent of signature of Presiding Officer on the Wakalat-Namas but the disputed Wakalat-Namas were manipulated during copying process and the appellant failed to check/verify the same with the original record before issuing attested copies thereof.

- Ground "H" is incorrect, hence, denied.
- Ground "I" is incorrect, hence, denied. The competent authority had complied with all the legal and codal formalities before awarding punishment to the appellant.
- Ground "J" is incorrect, hence, denied. The order sheets in the Inquiry proceedings manifest the presence of the appellant at the time of recording evidence of inquiry witnesses.
- Ground "K" is incorrect, hence, denied.
- Ground "L" is correct to the extent of 19 years of service rendered by the appellant, however, his service record is not spotless.
- Ground "M" is legal hence, needs no reply.

It is therefore, prayed that the appeal in hand may please be dismissed with heavy cost.

Respondent No.1



Muhammad Rauf Khan)
District & Sessions Judge, Swabi

Respondent No. 2



Registrar,
Peshawar High Court, Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No.1531/2022

Waqas Masih Appellant


...Versus...

District & Sessions Judge, Swabi & others.....Respondents

AFFIDAVIT:

It is solemnly affirmed that the contents of the comments are true and correct to the best of my knowledge and belief as per the office record and nothing has been concealed.it is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor defense have been struck off.

Respondents through:

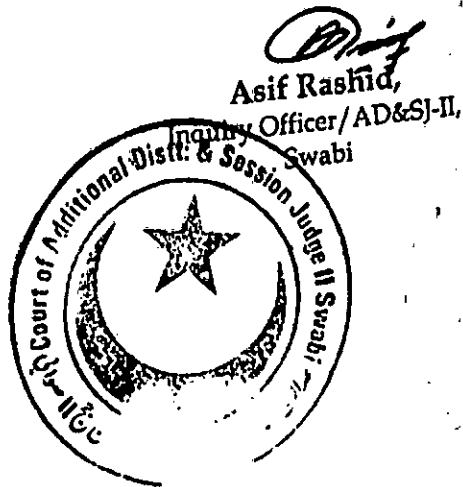

Riaz Muhammad
Superintendent Sessions Division
Swabi
Departmental Representative

Order No.07
23.06.2016

Delinquent officials Imran Ullah and Waqas Maseeh present. Riaz Muhammad, Assistant, Superintendent Office, Sessions Court, Swabi also present. Statement of Riaz Muhammad recorded which is available on file. As per directions of learned District & Sessions Judge, preliminary enquiry was conducted against the delinquent officials wherein statements of accused officials and that of representative of department were recorded and relevant record was scrutinized. Perusal of the record and statements available on file would show that, prima facie, case against the delinquent officials exist which require full-fledged inquiry against them under the relevant rules, therefore, with this observation, the preliminary inquiry file is sent to the Hon' able Sessions Judge, Swabi for necessary order. Muharrir of this court is directed to do the needful accordingly.

Annexure
"A"
01 page

Accepted
MA



CHARGE SHEETAnnexure
"B"
01 page

I, Muhammad Adil Khan, District & Sessions Judge, Swabi, as Competent Authority hereby charge you, namely:- Mr. Waqas Masih Sweeper as follows:

- a. That on 08.08.2015, you, while on duty during summer vacations, issued attested copies of Wakalatnamas of Syed Mubashir Shah, Advocate in number of decided cases, by putting/ forging thereon the signatures of Imranullah, Moharrir/incharge, Copying Branch, Sessions Division Swabi and that too with his (Imranullah's) connivance; and
- b. That by reason of above, you have rendered yourself liable to be proceeded against for misconduct under the Khyber Pakhtunkhwa (Efficiency and Discipline) Rules 2011.
- c. Therefore, you are called upon to submit your written defence before the Inquiry Officer within seven days of receipt of this charge sheet.
- d. In case of failure on your part so to do, it shall be presumed that you have no defence to offer and the proceedings shall be taken *ex parte*.
- e. You may also intimate if you want to be heard in person.

(Muhammad Adil Khan)
District & Sessions Judge/
Competent Authority, Swabi

Received (WaqasMasih) 25/08/2017
(Sweeper attached to Sessions Division, Swabi)

CHARGE SHEETAnnexure
"C"
01 page

I, Muhammad Adil Khan, District & Sessions Judge, Swabi, as Competent Authority hereby charge you, namely:- Mr. Imranullah Moharrir as follows:

- That on 08.08.2015, Mr. Waqas Masih, Sweeper, while on duty at Copying Branch Sessions Division Swabi during summer vacations, issued attested copies of Wakalatnamas of Mr. Syed Mubashir Shah, Advocate in number of decided cases, by putting/forging your signatures thereon with your active connivance; and
- That by reason of above, you have rendered yourself liable to be proceeded against for misconduct under the Khyber Pakhtunkhwa (Efficiency and Discipline) Rules 2011.
- Therefore, you are called upon to submit your written defence before the Inquiry Officer within seven days of receipt of this charge sheet.
- In case of failure on your part so to do, it shall be presumed that you have no defence to offer and the proceedings shall be taken *ex parte*.
- You may also intimate if you want to be heard in person.

(Muhammad Adil Khan)
District & Sessions Judge/
Competent Authority, Swabi

Received (Imran Ullah)
(Junior Clerk/Moharrir, P.P.O., Swabi)

26/8/2017

To,

The District & Sessions Judge,
Swabi.

Annexure
"E"

02page

Subject:

Reply regarding charge sheet, issued by Honourable District And
Sessions Judge Swabi. Dated 24-03-2017

Respected Sir,

I have honor to submit that the allegation leveled against me in the charge sheet mentioned above are totally false, fabricated based on malafide. The undersigned never put the signature of Imran Ullah on the Wakalat Nama in question furthermore the concerned advocate Syed Mubashir Shah having a good reputation in the Bar that is why such like loose act was not expected from him therefore I put my own initial/signature on the Wakalat Nama on the permission of my seniors . Whatever, (Fraud) committed it is act of the Munshi of the advocate named above but before my attestation there are some procedure for obtaining attested copies and after that procedure I put my signature on the Wakalat Nama produced before me and I put my initial/signature being attestator on it. The relevant procedure are as under..


1. That as per prescribed rules and regulations, initially a form will be furnished to the superintendent of the session court for obtaining attested copies of any criminal/ civil case, then after the written permission of the superintend the in-charge Muhafiz khana sort out the relevant case file and mentioned Rajuwa, Mawsula, date of decision and other particulars thereon and provide photocopies to the applicant and the same procedure has been done in this case.
2. After providing the relevant photocopies including the particular of the case i.e Mawsola Rajowa etc. produced before the attestator and the attestator attested the required pages. Similarly in such like situation the Wakalat Nama produced before me and I put my initial/signature on it.
3. That the case in question all the above codal formalities had been done by the superintendent and other officials. It is worth mentioning to note here that the Wakalat Nama in questions also bearing the signature of the presiding officer.
4. That being the subordinate I never asked from the superintendent nor from respectable presiding officer regarding their signatures. Normally when a document having the signature of a respectable judge, will presume that it is genuine. In this case the signature of the respected presiding officer is also genuine and similarly the signature of the superintendent and the particulars of the case mentioned in Wakalat Nama by the other officials as well.
5. As per relevant procedure of obtaining attested copy of any document, my position in this behalf is third and two forum ahead before me but in the present inquiry the above two forums i.e the office of the superintendent and other officials of Muhafiz Khana are illegally exempted which is against the norms of justice.

- (39) (38)
6. Whatever I did, the same has been done by me in the light of the permission/signature of the superintendent, particulars delivered by the official of Muhafiz khana in good faith. It is evident from the preliminary inquiry that no monetary benefit is involved nor anything else rather my attestation based on good faith in the light of the signatures of my superiors bosses.
 7. The undersigned is innocent committing no illegality and irregularity, mere blaming the undersigned is against the relevant law, procedure and natural justice in order to deprive the undersigned for further promotion. It is pertinent to note here that the undersigned is most senior one official and dropped from promotion in previous DPC constituted in 2016 on the pretext of pending inquiry.

It is therefore humbly prayed that on acceptance of this reply the charge sheet may kindly be filed without any further proceeding and the undersigned may please be consider for promotion in coming DPC. It is further humbly stated that the undersigned is a sole earning source of his family and already living in miserable condition.

Dated, 30/3/2017

Yours Obediently


Waqas Masih

(36)

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ضلع خيبر ڈسٹرکٹ انڈسٹریل زون ماہرین

Annexure "D"

01 page

معمولاً، جو بیلن پیش کیجئے وہ

1-08
31.03.2017

ضلع خيبر ماہرین!

[Handwritten signature]

ہرگز جن دہکالت ناموں کی صفحہ تقویدت صرف 8/15

کو جاری ہوئے ہیں جو نہ شامل انکوٹری ہیں ان دنوں

موسم گرما کی عام تعطیلات تھی کہ وہ من مائل مٹی کے تھا

ہمہ نقل ڈیوٹی روڈ سٹر کارڈ نقل اسبڑ ماہرین یہ

سے شامل انکوٹری ہے۔

ہمہ من مائل نہ نہ دہکالت نامے لکھتے کر رہے ہیں کہ وہ

ہیں ان دہکالت ناموں پر موجود دستخط من مائل کا ہے۔

گنتہ اور یہ خاصا من سے عاجزانہ دستہ عامہ نہ من مائل

کے خلاف جاری کردہ انکوٹری بلدیہ تھی عزیز کارڈ کی طرف

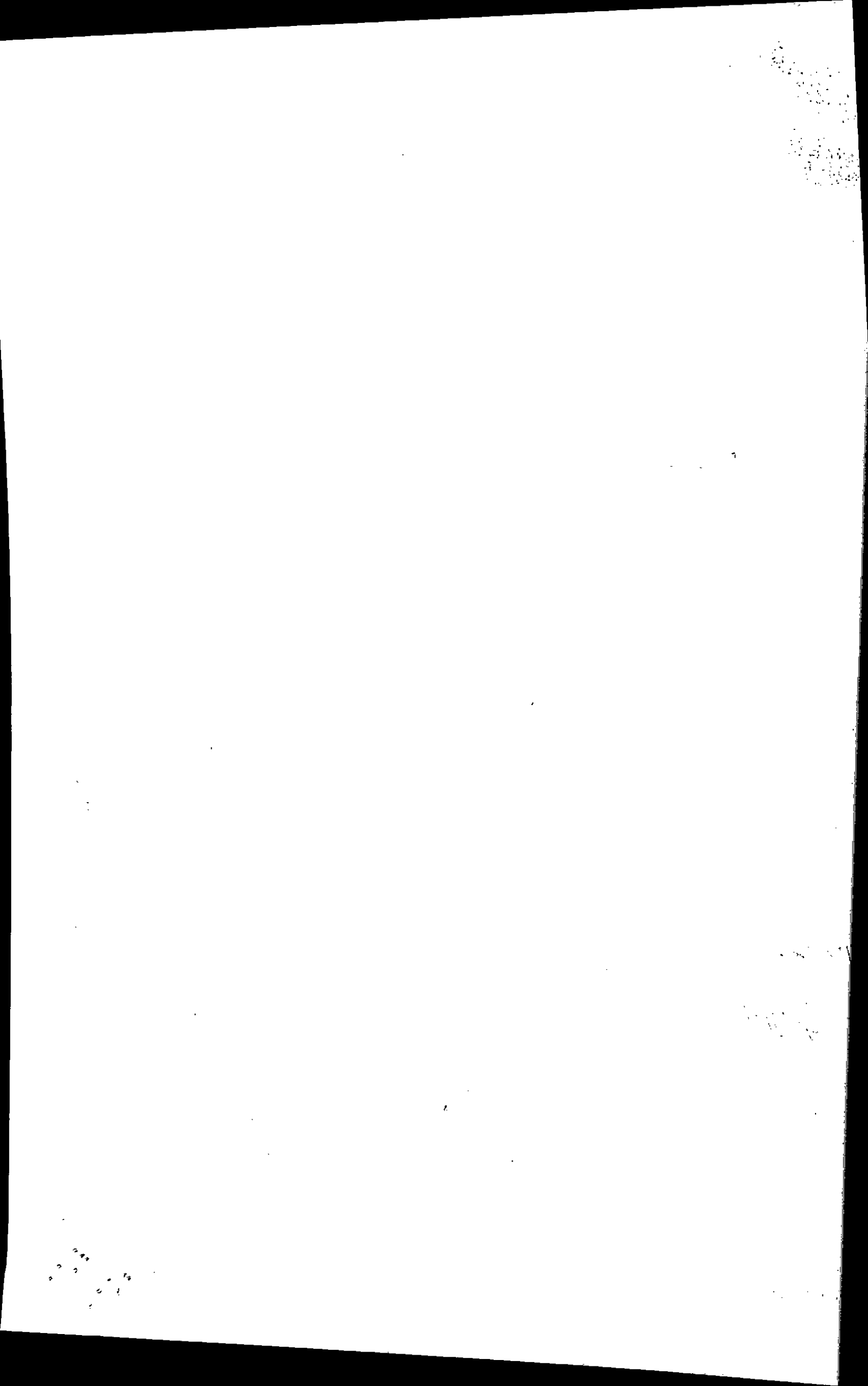
دفعہ شرعی جج

میں فوراً ہی

نمبر 28/3/17

آئیٹا ناقدہ عمران اہلہ محمد عدالت قیہ ایچ جی ماہرین

[Handwritten signature]



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Annexure "F"

01 page

Order No.1
12.04.2017

Inquiry file received from worthy Sessions Judge, Swabi vide letter No.2184/ (F-41) D&SJ dated 11.04.2017. It be registered.

Notice be issued to the delinquent officials Imran Ullah Junior Clerk/Muharrir and Waqas Maseeh Sweeper as well as to Assistant/English Clerk Sessions Division for 28.04.2017

(Usman Bashir Khan)

Additional Sessions Judge, -IV/Inquiry Officer, Swabi

Order No. 02.
28/04/2017

Delinquent Officials/accused namely Imranullah Junior Clerk/Moharrir and Waqas Maseeh Sweeper present, while Assistant/English Clerk Sessions Division not present.

Be summoned for 25.05.2017.

(Usman Bashir Khan)

Additional Sessions Judge-IV/Inquiry Officer, Swabi

Order No. 03.
25/05/2017

Delinquent Officials/accused namely Imranullah Junior Clerk/Moharrir and Muhammad Riaz Assitant/English Clerk Sessions Division present, while official Waqas Maseeh Sweeper not present. Be noticed for 15.06.2017.

(Usman Bashir Khan)

Additional Sessions Judge-IV/Inquiry Officer, Swabi

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Annexure
"G"
10page

INQUIRY REPORT

As a consequence of preliminary facts findings inquiry, one Imranullah Junior Clerk and Waqas. Maseeh Sweeper were charge sheeted by the competent authority and mater was entrusted to the Presiding Officer of the Court of AD&SJ-IV, Swabi for regular probe.

Alto
M

BRIEF CASE HISTORY:

1. The precise background of this inquiry is that the Honourable Peshawar High Court, Peshawar had sent the Wakalat Namas of the candidates, who had applied for the post of Additional District & Sessions Judges and during the course of verification the attested copies of Wakalat Namas issued to Syed Mubashir Shah advocate *i.e.* 17/SPL of 2020 The State ..vs.. Rahmanullah, 32/SPL of 2010 The State ..vs.. Asad Zaman, 22/SPL of 2012 The State ..vs.. Nizar Ali, 112/SC of 2009 The State ..vs.. Zebar, 8/6 of 2012 Aziz ur Rahman ..vs.. SHO etc., could not be traced out from the relevant cases files.

2. A preliminary inquiry was directed by the honourable District & Sessions Judge Swabi and the learned inquiry officer/Addl; District & Sessions Judge-II Swabi after recording statements of the above named officials, Riaz Muhammad Assistant Superintendent Office, Sessions Court Swabi recommended the matter for full-fledged inquiry on 23/06/2016.

3. The accused/delinquent officials were charge sheeted on 24/03/2017, and their reply regarding the charge were received on

M
04-03-2021
Additional District & Sessions Judge-IV
Swabi

31/03/2017, whereupon the matter was further entrusted to this court for conducting inquiry under the Khyber Pakhtunkhwa E&D Rules, 2011 against the accused official.

4. The subject inquiry was received from the Court/Office of District & Sessions Judge, Swabi on 12/04/2017 and thereafter was fixed for recording of evidence.

5. On 15/06/2017, Imranullah Copyist/Muharrir and Waqas Maseeh Sweeper were present and their statements were recorded, on 16/11/2018 Muhammad Idrees Computer Operator/English Clerk Sessions Division Swabi and Riaz Muhammad Assistant/COC were present and their statements were recorded. The statements of Muhammad Arif Reader JM-I Swabi and Asif Adil, clerk of Syed Mubashir Shah advocate were recorded on 17/02/2020 and 05/03/2020, respectively.


FINDINGS:

6. The aforementioned statements of the relevant officials & other persons coupled with the material available on the underlying inquiry file, leads me to the conclusion that undoubtedly, Syed Mubashir Shah Advocate stood disqualified for the post of Additional District & Sessions Judge announced under the supervision of Honourable Peshawar High Court, Peshawar, as some of his Wakalat Namas were not found present on the original files, but instead its attested copies were submitted before the August High Court. This delinquency was found during verification process of the Wakalat Namas, as directed from Honourable

MSJ
04-03-2021
Additional District & Sessions Judge IV
Swabi

The Peshawar High Court, Peshawar, qua when such omission was found, the then learned District & Sessions Judge, Swabi has directed to conduct a judicial inquiry, which was initiated, however, later on the same was transmitted to the undersigned for conducting final inquiry.


7. In the inquiry in hand, two officials namely Imranullah Moharrir alongwith Waqas Maseeh (Sweeper) were nominated as delinquent officials, who were charge sheeted, in response thereto they submitted their replications. It was on 08.08.2015, when the applications No. 6362, 6380, 6381, 6382, 6383, 6384 & 6385 were moved, which were allowed by Superintended Sessions Court on the even date, whereas, on the strength of ibid applications, attested copies of Wakalat Namas were also issued on that very day i-e 08.08.2015. Truly on 08.08.2015, the regular courts were closed due to summer vacations in the month of August and perhaps only the enlisted staff were present to perform the urgent judicial work. The subject attested Wakalat Namas were issued on 08.08.2015 and according to record i-e duty roster, copy available on file, on the subject day the names of two officials namely Muhammad Riaz Assistant/English Clerk alongwith Waqas Masih Sweeper (delinquent official) were enlisted to perform their duties in the copy branch on the same day. Similarly, the ibid duty roster highlights the name of Imranullah J/C (delinquent official) alongwith one Irfan Ali N/Q against the days of 27th & 28th July 2015. This fact particularly identifies that Imranullah J/C (delinquent official) had performed his part of duty much


04.03.2021
Additional District & Sessions Judge-IV
Swabi

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prior to 08.08.2015. Notwithstanding this, the copy of attendance register too, doesn't reflect the attendance of Imranullah J/C (delinquent official), rather the same shows that Muhammad Riaz English Clerk was present on his duty on the same day i.e. 08.08.2015, with whom the name of Waqas Maseeh (Sweeper) was mentioned in the duty roster. Imranullah J/C, since the day first has denied the allegations in his reply to the explanation with specific denial that neither he signed the subject Wakalat Nama nor had issued the same, as he was enjoying his summer vacations. Nothing in black & white exists on record that Imranullah was present in the copying branch on 08.08.2015. It was however, found that the attested copies bears the signature of Imranullah. The second delinquent official Waqas, who at the relevant time was sweeper by his designation, but as per his explanation he was transferred to the copying branch, where due to rush of work he was allowed to issue attested copies and due to such authorization from his officers, he issued the subject attested copies of Wakalat Namas to one Asif i.e. clerk of Syed Mubashir Shah Advocate. This official categorically acknowledged the issuance of attested Wakalat Namas by him, however, negated any malafide or vagueness on his part for the said act. According to his contention, as the subject Wakalat Namas were bearing the case number, date of institution, date of decision, Goshwara and date of consigning to record room, therefore, being the legal procedure, he attested such Wakalat Namas by affixing the signature of Imranullah, who was head of the copying branch.


04.03.2021
Additional District & Sessions Judge IV
Srauli


(29)

8. The question to be resolved was that which unit of the Judiciary was responsible for verification of the application submitted for obtaining attested copy of a document. Obviously, it is the job of Incharge record room to verify whether the document asked for obtaining attested copy exists on the case file concerned or otherwise. Thereafter, the copying agent is responsible to verify the genuineness of application, vis-à-vis, it is further duty of the examiner to examine and certify the copies. Truly, the copy branch play a pivotal role, qua it is the duty of head of the said branch to confront the copies provided to him with the relevant file and if found any ambiguity, no copy shall be provided to any individual, qua the matter is to be reported immediately to the officer/incharge concerned. Below are the job descriptions of Incharge record room (record keeper), copying agent, examiner, as defined in the Judicial

Estacode.

X. RECORD KEEPER

- i. Record keeper to ensure that certificate of reader regarding diet money is attached with file.
- ii. Checking of record by the record keeper.
- iii. How to hand over judicial record to successor on transfer or leave.
- iv. To check list of connected record.
- v. Checking of record received from the High Court.
- vi. Transmission of record of High Court.
- vii. To maintain a register C.D.8 for receipt of application and judicial files for copying purpose.


04.03.2021
Additional District & Sessions Judge-IV
Syrachi

(30)

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- viii. The reason for delay in handing over record to copying agency be given daily on the application for copies.
- ix. If it is not possible or desirable to hand over file then only the copy of concerned document be given to file fetcher and receipt taken in this respect.
- x. To maintain a running list of all the cases in which copies of judgment have been sent out.
- xi. To direct & supervise all the current business of receiving and issuing records.
- xii. Recording, examining, registering, placing, issuing and restoring files.
- xiii. To perform all functions as catered in District Office Manual Punjab Chapter-9.


XIII. COPYING AGENT

1. Responsible for maintenance of accounts.
2. Sanctioning of application for copies.
3. Reject or accept the application for copies.
4. Endorsement of date and time on application.
5. Initial the endorsement.
6. In case of doubt he is to obtain orders of the officer incharge.
7. Grant receipt in the prescribed form CD-10.
8. Cause the application to be entered in register CD-2 and S.NO of register be given in red ink on the reverse of applications.
9. Cause the application to be made over the file fetcher for bringing the record.

MS

04.03.2021
Additional District & Sessions Judge-IV
Swat

10. He shall be responsible that no file is taken out of copying room by anyone.
11. The copyists and file fetcher are supplied with locks and keys.
12. To prepare the duty list of his staff.
13. To ensure the public has no access to the copyists or the copying room.
14. To maintain service books and leave account for all the members of agency.
15. He is responsible for regular and property delivery of copies.
16. He is to ensure that no record is sent to the tehsil or outlying Court for supplying copies.
17. Cause of delay in delivery of copy beyond third day is to be written.
18. Recovery of outstanding fee.
19. Endorsement of date of delivery and of cancellation of stamps.
20. Maintain a register in form CD-11.
21. Assistant secretary of Copying Agency Committee.
22. Keep income account in form CD-3.
23. Monthly to submit report in case in which fee is to be realized.


04.03.2021
Additional District & Sessions Judge-IV
Swaraj

XIX. EXAMINER

- 1) Revision of copies.
- 2) Examine the copies.
- 3) Certify the copies.
- 4) Stamp the copies.
- 5) Page the copies.

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- 6) Endorsement the copies.
- 7) Cancellation of defective copies.
- 8) Submission of report against the copyist for his carelessness.
- 9) Verification of delay in preparation of copy.
- 10) To see that Court fee stamps affixed are punched, cancelled and initiated.
- 11) To see that all provision of law and rules have been complied with.
- 12) At least every attestation made in such copy by initialling the same.
- 13) Make an entry in register CD-5 as to the outturn of the copyist.
- 14) Cause of delay in delivery of copy beyond third day is to be written.
- 15) To submit report about the carelessness of copyist.
- 16) Can supply unattested copies in case of documents mentioned in item No. 9 of Schedule 'A' of RC-45.
- 17) Attest the translated copies.
- 18) Entries of translation to be made in register CD-2 & CD-3.

XVI. FILE FETCHER

1. Maintenance of register Form CD-7 of application made over to record room and Court staff.
2. Maintenance of register in Form CD-8 for acknowledgement of receipts of application and judicial files. To be kept under lock and key.
3. In case of urgent application he is to endeavour to receive record.
4. To keep all the record and files in lock which are in his possession.


Handwritten signature

06-03-2021
Additional Director & Sessions Judge-IV
Syrath

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9. The available record, ipso facto, highlights that on 08.08.2015, one Muhammad Arif J/C was on duty in the record room, but neither has he been charge sheeted in the instant inquiry nor was he so associated clearing the course of fact and findings inquiry. However, he was summoned and examined by the undersigned who in his testification admitted furnishing/providing subject Wakalat Namas to the clerk of Syed Mubashir Shah Advocate. Even otherwise, in the Sessions division on the subject day i-e 08.08.2015, Muhammad Riaz English Clerk was on duty being in-charge along with the delinquent official Waqas Maseeh was on duty and supervisor was Muhammad Riaz English Clerk who too was not enjoined in the process of inquiry. The role of Naveed-ul-Islam, clerk of the said advocate, was never considered at the time of facts findings inquiry as without his involvement the issuance of disputed copies could not have been possible. Unfortunately during the present inquiry he has died. It is due to his negligence, Advocate Syed Mubashir Shah also suffered a loss so overwhelming by way of an outright disqualification from being candidate to the post of ADJs.


04.03.2024
Additional District & Sessions Judge-IV
Srawal

10. The delinquency under issue prima facie tilts towards Naveed-ul-Islam (now dead), clerk of the advocate, Muhammad Arif J/C, who provided photocopies of subject Wakalat Namas to the said clerk of advocate and Waqas Maseeh (Sweeper) who attested the same, ipso facto all the three have not attended the matter in a diligent manner and thus the underlying untoward incident took place. Nonetheless, the fact that during

(34)

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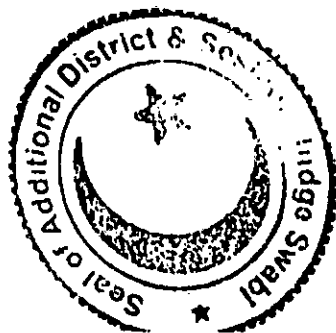
those days, there were summer vacations and other concerned staff was not available at the relevant time such stereotype attitude and unwanted manner can also be a factor, that cannot be brushed aside.


11. While summing up it is recommended that Imranullah Junior Clerk is not connected with the matter, whereas Waqas Maseeh Sweeper has admitted to have attested the copies in a stereotype manner so he cannot be absolved straightaway. However, his dependent status and working under supervision of seniors widened scope of leniency for him leaving to the discretion of the authority.

12. Apart from the above, the undersigned is further of the view that training as well as seminars be arranged for ministerial staff especially those, deputed in record room and copying branch for enhancing, strengthening their capability and capacity in order to curtail happening of alike incidents in future. At the end, with heavy heart the undersigned regrets the inordinate delay in conclusion of the proceedings; which largely was due to the misplacing of the file.

Dated: 04.03.2021.

Submitted accordingly




(Shah Wali Ullah Hamid)
Addl; District & Sessions Judge-IV/
Inquiry Officer, Swabi



COURT OF DISTRICT & SESSIONS JUDGE, SWABI

Court File No. 33 /Admn of 2021
 Title: Inquiry Against Imran Ullah Etc

18

Annexure
 "H"

01 page

S.No. & Date of order	Order/Proceeding Sheet
<p><u>O:01</u> 11.03.2021</p> <p><u>62</u> 18.03.2021</p>	<p>1. File received from the learned AD&SJ-IV/ Inquiry Officer Swabi. Be entered in the admin register.</p> <p>2. Come up for consideration /further proceedings on <u>18 . 03 .2021</u> (09:40 hrs).</p> <p style="text-align: right;">  (Hafiz Naseem Akbar) District & Sessions Judge, Swabi </p>
<p><u>N-R</u> 25.03.2021</p>	<p>1. Inquiry Report dated 04.03.2021, received from learned AD&SJ-IV/Inquiry Officer quite belatedly, has been perused.</p> <p>2. Conclusion drawn by the learned Inquiry Officer is agreed with. Imran Ullah (Junior Clerk) stands absolved from the disciplinary proceedings as recommended by the Inquiry Officer. Draft of formal order for the purpose be put on the date fixed. Show cause notice^{is} to be served upon accused /official Waqas Masih (Sweeper). Draft of the same be prepared and put up on 25.03.2021 (09:40 hrs).</p> <p style="text-align: right;">  (Hafiz Naseem Akbar) District & Sessions Judge, Swabi </p> <p>The Hon'ble Presiding officer is on Medical Leave.</p> <p>Adjourned for 09.04.2021 (11:00 hrs)</p>



The District Judiciary Swabi

No. 2497-100 / (F- 41) D&SJ

Dated: 17. 04. 2021


Phone # 0938-280372
Fax # 0938-280117

dsjswabi@yahoo.com
dsjswabi1@gmail.com

01 page


OFFICE ORDER
16.04.2021

The accused official Imranullah (Junior Clerk), currently attached to the court of AD&SJ-I/MCAC Swabi and having faced disciplinary proceedings before the learned AD&SJ-IV/Inquiry Officer in Court File No. 2/6 of 2017 for connivance with co-accused Waqas Masih (Sweeper) in issuing attested copies of Wakalatnamas through forgery of his signatures, is hereby exonerated in agreement with findings dated 04.03.2021 of the learned Inquiry Officer. This order is issued in terms of Rule-14(3) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011.


(Hafiz Naseem Akbar)
District & Sessions Judge,
Swabi

Copy for information and the needful to:

1. The Inquiry Officer /AD&SJ-IV Swabi.
2. The official concerned.
3. Service record of the official.
4. Court File No. 33/Admn of 2021.


District & Sessions Judge,
Swabi

Amir

To,

The District & Session Judge, Swabi,

Annexure

"J"

02page

Subject: Reply regarding Notice (order under rule 14(4)) issued by honorable District & Session Judge, Swabi, vide Endst No. 2495-96/ (F/41)/ D & SJ, dated : 17-04-2021.

R/ Sir,

1. I have honor to submit, that I have recorded my statement / reply before this and the same may kindly be considered as a part and parcel of this.

Dr-05

26-04-2021

District & Sessions Judge
S W A B 13

2. I have categorically mentioned in my earlier statement, that I was a sweeper

and performed my duty in Session Court, including Copying Branch.

3. The allegations levelled against me are not based on truth, but a concocted story advanced by the officials of the copying branch in order to save their skin from the consequences of inquiry and I was indulged wrongly.

4. I have thoroughly discussed in my previous statement, procedure of obtaining copies from copying branch and such proceedings having a complete chain and in this chain different officials are working.

5. It is pertinent to note here, that the whole procedure and manner through which Wakalat Nama's in question were received from Muhafiz Khana in the statement of Mr. Muhammad Arif, wherein he stated, that the application for attested copies of Wakalat Nama's of Sayyed Mubashir Shah Advocate were already allowed/ approved by the then Superintendent and also point out detail and relevant procedure for obtaining Wakalat Nama's. The perusal of record was duty of an other officials, while approval authority was another. I was the only last employ to handed over already checked attested copies to the applicant.

6. Whatever have been done (denied), the same could be in good faith and nothing else. The apprehension was there, that said act may be done due to rush of work as a large number advocates had to obtain the attested Wakalat Nama's, for the recruitment in judiciary.

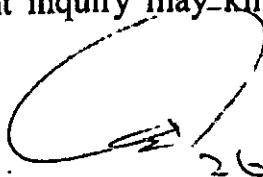
7. I am innocent, committing no illegality not involved in this matter. My previous statement recorded clearly indicate that I have performed my duty with great zeal and honesty.

(6)

8. Further stated, that there is no complaint available in my 17 years service record, and never involved in wrong practices.
9. The exoneration of the concerned officials and indulging me is totally against the norms of justice.
10. Furthermore the under signed also request your good self to be heard in person.

Prayer : It is humbly requested by keeping in view 17 years blameless service, the instant inquiry may kindly be filed without any further proceeding.

Dr-05
26-4-2021


26/4/21

Waqas Masih
Muharrir Family Court, Lahor
District Swabi.

District & Sessions Judge
SWABI

COURT OF DISTRICT & SESSIONS JUDGE, SWABI

Annexure
"K"
01 pageCourt File No. 33/Admn of 2021
Title: Inquiry Against Imranullah Etc

S.No. & Date of order	Order/Proceeding Sheet
<p>O:08 02.06.2021</p> <p>No. 500 04/06/2021</p>	<p>1. Accused official Waqas Masih present and has been heard at fair length in the chamber.</p> <p>2. Accused official inter alia contends that the attesting initials on the disputed wakalatnamas duly belonged to him and were ^{not} forgery of the initials /signatures belonging to Junior Clerk Imranullah. He points out that register of copying branch concerning the year 2015 and before, may be perused for verification of his assertion.</p> <p>3. Office is directed to produce said registers for the year 2014 and 2015 for perusal on the date fixed.</p> <p>4. Put up on <u>11</u> . <u>06</u> .2021 (<u>09:30</u> hrs) to continue with the proceedings. Junior Clerk Imran Ullah be also summoned for the date fixed.</p> <p style="text-align: right;">(Hafiz Naseem Akbar) District & Sessions Judge, Swabi</p> <p style="text-align: center;">K 29</p>

COURT OF DISTRICT & SESSIONS JUDGE, SWABI

Court File No. 33/Admn of 2021
 Title: Inquiry Against Imranullah Etc.:

23

Annexure
 "L"
 03page

Order/Proceeding Sheet

S.No. & Date of order

O:11
 26.06.2021

1. Accused official Waqas Masih present in person. Hearing has already been given to him. Matter is fixed for order today. Record perused.
2. The disciplinary action in hand is based on orders /notes dated 17.02.2016 recorded by the then Hon'ble District & Sessions Judge Swabi. They are reproduced for convenience of reference;

Note No. 1
 17.02.2016

The matter in issue is related to the *wakalatnamas* of advocates /candidates appearing in test /interview to the post of Additional District & Sessions Judges which were received to this office from the august Peshawar High Court, Peshawar with the directives to verify the same with original case records and submit report in respect thereof to the august court. It is pertinent to mention here that during verification process, it came to surface that some of these *wakalatnamas* were not even existed on case files, therefore, a question arises that who had issued the same and how the attested copies of these *wakalatnamas* were obtained from the Copying Branch, Swabi, therefore, in this scenario of the matter, it is necessary to conduct a judicious probe thereof. It is also pertinent to mention here that the attested copies of these *wakalatnamas* have been obtained from Copying Branch, Swabi during Summer-Vacations, 2015 on 08.08.2015, therefore, in order to ascertain the facts & fix liability, the Register pertaining to entries of Applications for obtaining attested copies as well as the Duty Roster of Para-Legal Staff for the Summer-Vacations be requisitioned for 17.02.2016.

Note No. 2
 17.02.2016

Register pertaining to Copying Branch, Swabi and Duty Roster of the Para-Legal Staff during Summer Vacations, 2015 received. The relevant entries of the ibid Register reveals that the attested copies of these *wakalatnamas* have been issued under the signature of Imran Ullah, Junior Clerk whereas the Duty Roster depict that on the same day, Mr. Muhammad Riaz, Assistant /E.C & Waqas Masih, Sweeper were scheduled for urgent duties & management of the office of Sessions Division, Swabi, therefore, a question arises that when Imran Ullah, Junior Clerk was on summer vacations, how he is shown to have issued the attested copies of *Wakalatnamas* under his signature. Mr. Imran Ullah, J.C & Waqas Masih is directed to submit written explanation that how the attested copies of the *Wakalatnamas* in issue were provided to the candidates /advocates when the same were not existing on original case records. Both these officials are directed to submit their written explanations separately within 07 days of its receipt positively failing which it would be presumed that they have nothing in their defence and as such they will be proceeded against per the Civil Servants (Efficiency & Discipline) Rules, 2011. Matter in hand be put on 25.02.2016."

3. The replies of accused officials were found unsatisfactory on 26.02.2016. The then AD&SJ-II Mr. Asif Rashid was appointed for preliminary inquiry in the matter accordingly. The said officer, vide order dated 23.06.2016, found as follows;

District & Sessions Judge
 Swabi

Alfred
Alfred


30/06/21

Alfred

O:11
(Continued)

"..... Perusal of the record and statements available on file would show that, prima facie, case against the delinquent officials exist which require full-fledged inquiry against them under the relevant rules, therefore, with this observation, the preliminary inquiry file is sent to the Hon'ble Sessions Judge Swabi for necessary order. Moharrir of this court is directed to do the needful accordingly."

4. The learned predecessor in office issued separate charge sheet dated 24.03.2017 to both the accused official namely Waqar Masih and Imranullah. The AD&SJ-II was appointed as Inquiry Officer in the matter vide letter No. 1037(F-41)/D&SJ dated 25.03.2017. The said Inquiry Officer, vide order dated 31.03.2017, returned the file with the remarks that he was legally debarred from conducting formal inquiry in the matter. The inquiry was then entrusted to AD&SJ-III Swabi vide order dated 08.04.2017 who informed, vide No. 270 dated 11.04.2017, that one the accused official was attached with her court and for the interest of justice etc it would be most appropriate to conduct the inquiry through another officer. Consequently the matter was marked for inquiry to Mr. Usman Bashir vide order dated 11.04.2017 endorsed on the margin of letter in question. The learned Inquiry Officer remained engaged with the matter till 29.05.2019 whereafter he was replaced by his successor who further took his time to conclude the inquiry vide report dated 04.03.2021 received at this end on 09.03.2021.
5. Accused official Imranullah (Junior Clerk) was absolved vide order dated 18.03.2021 in agreement with the conclusion drawn by Inquiry Officer. Formal exoneration order in this respect was issued vide No. 2497-100(F-41)/D&SJ dated 17.04.2021. Accused official Waqas Masih was issued show cause notice, in terms of Rule-14(4), vide No. 2495-96/(F-41)/D&SJ dated 17.04.2021.
6. Reply of accused official Waqas Masih was filed on 26.04.2021. He was afforded personal hearing on 02.06.2021 and 17.06.2021. Registers of copying branch for the year 2014 and 2013 were also examined, on the request and in presence of the accused official, on 17.06.2021.
7. It would transpire that the accused official, during various statements /replies submitted in the course of inquiry, never denied to have signed the documents issued as attested copies. However according to Para-2 of his initial reply dated 31.03.2017 it was stressed that photocopies of the relevant documents were produced to him after having been attested by the attester. Accused official has been categorically denying the charges of forgery. Perusal of record would transpire that there is no attester of the impugned photocopies other than the accused official himself. It is also an admitted position that he attested the said copies of wakatnamas on production by applicant clerk counsel Asif. The documents for attestation were not handed over /delivered to the accused official


District Judge Swabi


O:11
(Continued)

in the official channel. The initials /signatures belonging to the accused official, available on the impugned photocopies and the record of photocopying branch registers, were compared culminating in to observations vide order dated 17.06.2021 as follows;

“..... On comparison it turns out to be arguable whether the accused official issued the impugned attested copies on 08.08.2015 under his own initials /signatures or with the forged initials /signatures of Imranullah the then Incharge of copying branch.”

8. Accused official Waqas Masih, even if given benefit of doubt as regards alleged forgery of signatures in the light of foregoing, may not be absolved of negligence for receiving the documents from a private person (clerk counsel) and issuing the same as attested copy of official record. One may also not remain oblivious of the fact that the accused official (then appointed as sweeper) was entrusted with the clerical assignment for shortage of staff. It is again a considerable aspect of the matter that the underlying formal inquiry, initiated vide letter /order dated 25.03.2017, took almost 4 years to end up in findings dated 04.03.2021.
9. Accused official Waqas Masih is found guilty but entitled for lenient view in the light of reasons discussed above. Minor penalty of withholding increment for two years with effect from December 2021 is imposed against the accused official in terms of Rule-4(1)(a)(ii) of the Rules.
10. Formal office order be put up on the date fixed. The sealed record, sent by AD&SJ-II Swabi vide letter No. 109 dated 30.06.2016, be also traced and placed before the undersigned on 01.07.2021 (12:15 hrs).

Announced
26.06.2021


(Hafiz Naseem Akbar)
District & Sessions Judge,
Swabi

مخدوم صاحب ڈسٹرکٹ اینڈ سیشن جج صاحب ہمایہ

Annexure "M" 01 page

دو خواست جملہ جمع کرنے سے پیشین / اپیل قلمانہ ذیل
ملاحظہ ہے -

Alleged
[Signature]

جناب عالی!

(1) یہ کہ من سائل نے اپنے فرسے پیشین / اپیل قلمانہ مورخہ 6.8.2022 کو بھروسہ ڈسٹرکٹ جج صاحب پشاور کے پشاور جمع کے کیے۔

(2) یہ کہ من سائل کے وکیل کو بذریعہ فون اطلاع دی جا کر ہدایات کی گئیں کہ اپیل قلمانہ کو منسلک ڈسٹرکٹ اینڈ سیشن جج صاحب کی عدالت جمع کیا جائے۔

(3) یہ کہ من سائل کو اپیل قلمانہ مورخہ 12.8.2022 کو موہول ہو کر آج عدالت حضور میں جمع کرنا مطلوب ہے۔

لینڈ اسٹریک کہ من سائل کی فرسے پیشین / اپیل قلمانہ عدالت حضور میں جمع کر کے مندر کار دعائی لکھنے کیسے چلے۔

دعا ہے مسیح خداوند فیصلی نور
لاہور ہمایہ
13/8/21

Received in clay home of last working day.
Put up draft letter before the Distt (Acting).
[Signature] 13.08.2022



The District Judiciary Swabi

Phone # 0918-280172
Fax# 0918-280128
Email: djswab1@gmail.com

No. 2577 /F-185 /D&SJ

Dated 16.08.2021

Attested

M. J. ...

To

The Registrar,
Peshawar High Court
Peshawar

Subject: MERCY PETITION/DEPARTMENTAL APPEAL

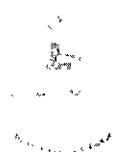
Dear Sir,

Official Waqas Masih Junior Clerk submitted mercy petition/departmental appeal, before this office, the same is forwarded with reference to section 22(2) of KP Civil Servants Act, 1973 for the favour of further appropriate order, please.

Enclosed: 21 sheets

Yours faithfully,

M. J. ...
District & Session Judge,
Swabi



Phone 90 98-280372
Fax# 9938-280128
Email dspswabi@gmail.com

No. 70-183/02881

Dated 20/11/2021

To

The Registrar,
Peshawar High Court
Peshawar

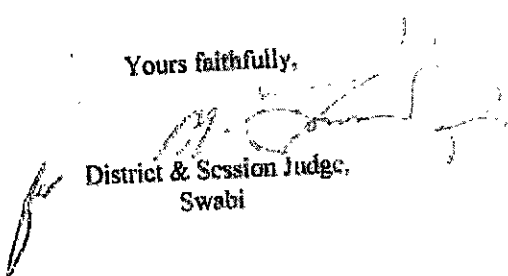
Subject: MERCY PETITION/DEPARTMENTAL APPEAL

Dear Sir,

Official Waqas Masih Junior Clerk submitted mercy petition/departmental appeal, before this office, the same is forwarded with reference to section 22(2) of KP Civil Servants Act, 1973 for the favour of further appropriate order, please.

Enclosed: 71 sheets.

Yours faithfully,


District & Session Judge,
Swabi

BEFORE THE REGISTRAR PESHAWAR HIGH COURT 01page

PESHAWAR

Departmental Appeal NO _____ of 2021/mercy petition

Waqas Masih (Moharir) son of James Masih at Judicial Complex Swabi, tehsil and district Swabi

..... (Appellant)

VERSUS

District and Sessions Judge Swabi and other

.....(Respondents)

To,

1. District and Sessions Judge Swabi
2. Additional Sessions Judge-IV, Swabi.

Subject :NOTICE FOR FILING Departmental Appeal

That the petitioner is filling **Departmental Appeal** Petition before Peshawar High Court Peshawar, therefore you are hereby informed through this notice along with relevant record regarding the filling of above **Departmental Appeal**.

Dated : 05.08.2021

Counsel for Appellant



RAWIL KHAN

Advocate, High Court

At Judicial Complex Swabi.

Received through Post.
Office to report as to where
such like correspondence is
placed.

Rawil Khan
09.09.2021