

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.460/2012

Date of presentation of Appeal.....31.03.2012

Date of Hearing.....15.09.2023

Date of Decision.....15.09.2023

**Mr. Iftikhar Ahmad, Ex-Sub Engineer T/Well Irrigation Sub
Division PeshawarAppellant**

Versus

1. **The Government** of Khyber Pakhtunkhwa Peshawar through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. **The Secretary to Government of Khyber Pakhtunkhwa**, Irrigation Department, Peshawar.
3. **The Chief Engineer (South)**, Irrigation Department Khyber Pakhtunkhwa Peshawar.....(**Respondents**)

Present:

Mr. Yasir Salim, Advocate.....For the appellant

Mr. Asad Ali Khan, Assistant Advocate General.....For respondents

.....
**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
READ WITH SECTION-10 OF THE KHYBER
PAKHTUNKHWA (THEN NWFP) REMOVAL FROM
SERVICE (SPECIAL POWERS) ORDINANCE, 2000
AGAINST THE OFFICE ORDER NO.1478-82 DATED
04.07.2011 COMMUNICATED TO THE APPELLANT IN
THE MONTH O F DECEMBER, 2011 WHEREBY THE
PENALTY OF REMOVAL FROM SERVICE HAS BEEN
AWARDED W.E.F 16.08.2010 AGAINST WHICH THE
DEPARTMENTAL APPEAL DATED 26.12.2011 WAS
NOT RESPONDED SO FAR.**



Page 1
PESHAWAR
SCANNED

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case as set in the memorandum and grounds of appeal are that appellant was appointed as Sub engineer (BPS-11) in the Irrigation Department vide order dated 17.11.2006; that, while working against the said post, he applied for extraordinary leave (EOL) without pay, the application was accepted and he was granted EOL, the leave was extended from 16.08.2009 to 15.08.2010. In the meanwhile, the appellant fell ill due to which he was unable to resume duties. Resultantly, notices were issued to him by the department but the same were not received to him. That the appellant applied twice for medical leave on 08.01.2011 and 25.01.2011 and his case was sent to Standing Medical Board (SMB). That without waiting for the report of SMB, an absence notice was issued in the newspaper and vide order dated 04.07.2011 the appellant was removed from service.

02. Feeling aggrieved from the removal order, the appellant filed departmental appeal on 26.12.2011, which was not responded to, therefore,, the appellant filed the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

04. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.



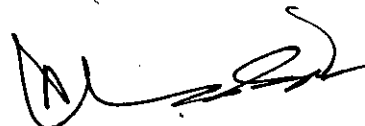
05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

06. Perusal of record reveals that the appellant, while serving as Sub Engineer (BPS-11), applied for leave without pay, after its expiry, he filed another application to the authority for medical leave. In the meantime, his case was sent to the Standing Medical Board. Admittedly, before the report of the Board, he was removed from service. The issue in this case is that the appellant has been removed from service under the Removal from Service (Special Powers) Ordinance, 2000, but the relevant provisions have not been fully followed by the department, which are mandatory in the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Section-3 of the said Ordinance is as under:

"(2) Before passing an order under sub-section (1), the competent authority shall,-

(a) by order in writing, inform the accused of the action proposed to be taken with regard to him and the grounds of the actions; and

(b) give him a reasonable opportunity of showing cause against that action within seven days or



within such extended period as the competent authority may determine"

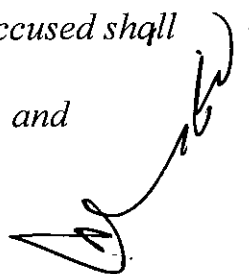
For the purpose, an inquiry is must, which is to be conducted as provided in Section-5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Section-5 is reproduced below:

" 5. Power to appoint an Inquiry Officer or Inquiry Committee.—(1) Subject to the provisions of sub-section (2), the competent authority shall before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed of the acts or omissions specified in section.3. The Inquiry Officer, or, as the case may be, the Inquiry Committee, shall-

(a) communicate to the accused charges and statement of allegations specified in the order of inquiry passed by the competent authority.

(b) require the accused within seven days from the day the charge is communicated to him to put in a written defence;

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him; and



(d) *hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority."*

Although, the procedure provided in Section-3 (2) has been followed by issuing notice regarding showing cause for absence etc. but the procedure for inquiry under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, which has already been reproduced above, has not been followed.

07. Therefore, the impugned action cannot be sustained. Thus, by accepting the instant service appeal, we direct the reinstatement of the appellant for de-novo inquiry which is to be conducted under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, within 60 days of the receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of September, 2023.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executives)

SCANNED
KPTST
Peshawar

15th Sep, 2023 1. This matter was fixed for today but the office did not produce the case file. The Reader orally reported that that was not found in the concerned Branch. As the matter was fixed for today, it was directed that office shall reconstruct the file by making printout from the soft scanned copy of the file, which was accordingly done and reconstructed file was also placed before the Tribunal. As the original was misplaced, therefore, a fact finding enquiry be conducted by appointing Mr. Mehmood Ur Rehman Kazi, Manager MIS, who shall report after conducting the fact finding enquiry within twenty days fixing the responsibility for further proceedings. The file be placed before the bench today. The reconstructed appeal be again scanned for the purpose of record.


(Kalim Arshad Khan)
Chairman

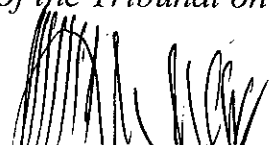
S.A #.460/2012

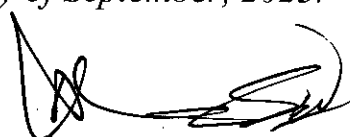
ORDER

15th Sept. 2023

Adnan Shah. P.A

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.
2. Vide our detailed judgment of today placed on file, the impugned action cannot be sustained. Thus, by accepting the instant service appeal, we direct the reinstatement of the appellant for de-novo inquiry which is to be conducted under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, within 60 days of the receipt of copy of the judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of September, 2023.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

Service Appeal No. 416/2012

04.02.2019

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar and cannot attend the Tribunal today. Adjourned to 22.04.2019 for arguments before D.B.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22.04.2019

Nemo for the appellant. Addl. AG for the respondents present.

It is already past 3.00 P.M and despite repeated calls no one is in attendance on behalf of the appellant.

Dismissed for non-prosecution. File be consigned to the record room.


Member


Chairman

ANNOUNCED
22.04.2019

17.09.2018

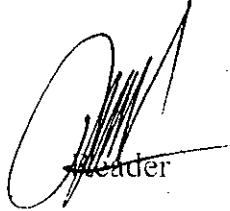
Clerk to counsel for the appellant. Mr. Kabirullah Khattak learned Additional AG, for the respondents present. Due to General Strike of the Bar, arguments could not be heard. To come up for arguments on 23.10.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

23.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 10.12.2018.


Chairman

10.12.2018

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned by way of last chance. To come up for arguments on 04.02.2019 before D.B.


Member

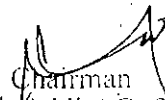

Member

14.2.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 20.04.2018 before D.B.

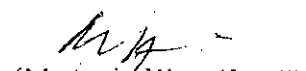
20.04.2018


Member


Chairman

Counsel for the appellant and Addl:AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 05.07.2018 before D.B.

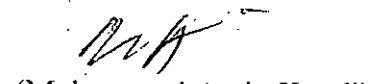

(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

05.07.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Jan Ayaz, Assistant for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 17.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Kundi)
Member

17.08.2018


Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 17.09.2018 before D.B.

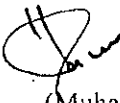

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

13. 25.07.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG alongwith Mr. Zakir Khan, Assistant for the respondent present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 24.11.2017 before D.B.

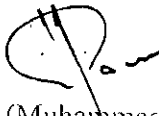

(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

24.11.2017

Learned counsel for the appellant present. Learned District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourn. To come up for argument on 11.12.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

11.12.2017

None present on behalf of the appellant. Mr. Riaz Khan, learned AAG along with Riaz Ul Haq Superintendent, for the respondents present. Fresh notice be issued to the appellant and his counsel for attendance. To come up for further arguments on 14.02.2018 before D.B


(Muhammad Hamid Mughal)
MEMBER


(Gul Zeb Khan)
MEMBER

01.08.2016

Counsel for the appellant and Mr. Zakir, Assistant
alongwith Additional AG for respondents present. Requested for
adjournment moreover Member copy of the instant appeal is not
available. Directed to provide the same on or before the next
date of hearing. To come up for arguments on ~~6-12-16~~
before D.B.


MEMBER


MEMBER

06.12.2016


Counsel for the appellant and Mr. Ziaullah, GP for the respondents
present. Learned counsel for the appellant requested for adjournment.
Request accepted. To come up for arguments on ~~13-4-17~~ before D.B.


(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

13.04.2017

Counsel for the appellant and Mr. Zakir, Assistant
alongwith Mr. Kabir Ullah Khattak Assistant: AG for the
respondents present. Learned counsel for the appellant informed
that he was granted extra ordinary leave w.e.f from 16.08.2009 to
.15.08.2010. The appellant was asked to that why he took extra
ordinary leave, he informed that in order to seek some job abroad
he got extra ordinary leave. In order to ascertain details of visits
abroad and whether those were with the permission of the
respondents, we would like to see original and expired passports of
the appellant. Learned counsel for the appellant is directed to
produce original and expired passport of the appellant pertaining to
2009 onwards on or before the next date of hearing. To come up
for arguments on 25.07.2017 before D.B.


(Ahmad Hassan)

Member


(Muhammad Amin Khan Kundi)

Member

1.4.2015

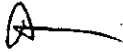
Appellant with counsel and Mr. Ziaullah, GP with Jan Ayaz, Assistant for the respondents present. The learned Member (Judicial) is on official tour to D.I.Khan, therefore, case to come up for arguments on 21.10.2015.



MEMBER

21.10.2015

Counsel for the appellant and Mr. Jan Ayaz, Assistant alongwith Mr. Muhammad Jan, GP for respondents present. Due to shortage of time, therefore case is adjourned to 18-4-16 for arguments.




MEMBER



MEMBER

18.04.2016

Counsel for the appellant and Mr. Zakir, Assistant alongwith Addl: AG for respondents present. Arguments could not be heard due to paucity of time. To come up for arguments on 01.08.2016.



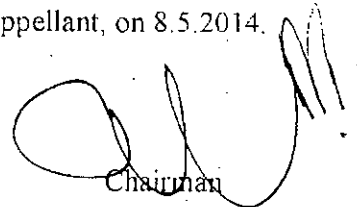
Member



Member

12.12.2013

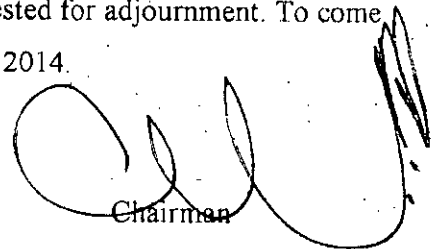
Mr. Kisan Sher, attorney for the appellant, on behalf of the appellant and Wazir Islam, Assistant on behalf of respondents with AAG present. Representative of the respondents stated that they have ~~not~~ information that the appellant is himself not in the country and is abroad since long that case on his behalf is being pursued by his attorney. The attorney for the appellant, on the other hand, stated that the appellant is in the country and further that he would appear on the next date, if so required. The appellant should appear in person for further proceedings/arguments, particularly with regard to maintainability of the appeal filed on behalf of the appellant by his attorney in the face of mandatory provision contained in rule 6(2)(f) of the NWFP (KPK) Service Tribunal Rules, 1974 providing that the memorandum of appeal shall be signed by the appellant, on 8.5.2014.



Chairman

8.5.2014

Appellant with counsel (Mr. Sajid Amin, Advocate) and Mr. Wazir Islam, Assistant on behalf of respondents with Mr. Usman Ghani, Sr. G.P present. Appellant produced his National Identity Card, copy whereof is placed on file. Both the learned counsel for the appellant and learned Sr. GP requested for adjournment. To come up for arguments, as before, on 01.10.2014.



Chairman

01.10.2014

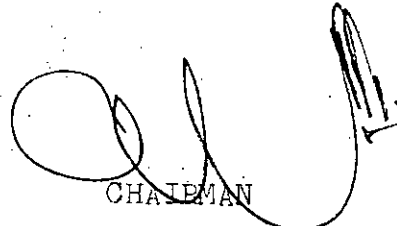
Appellant with counsel (Mr. Sajid Amin, Advocate) and Mr. Javid Ali, A.O on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Arguments could not be heard due to incomplete Bench. To come up for arguments, as before, on 01.04.2015.



Member

12.09.2012

Counsel for the appellant (Mr. Sajid Amin, Advocate) and Mr. Muhammad Rafique, SUPDT, for respondents with AAG present. To come up for written reply/comments on 10.12.2012.


CHAIRMAN

10.12.2012

Mr. Sajid Amin, Advocate, counsel for the appellant, on behalf of the appellant and Mr. Muhammad Rafique, Supdt. on behalf of the respondents with AAG present. Written reply/comments received on behalf of the respondents, copy whereof be handed over to the appellant/counsel for the appellant for rejoinder on 15.02.2013.


Member


Chairman

15.2.2013

Counsel for the appellant (Mr. Sajid Amin, Advocate) and Mr. Wazir Islam, Assistant on behalf of the respondents with AAG present. Replication/rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments on 4.7.2013.


Chairman

04.07.2013

Clerk of counsel for the appellant and Mr. Wazir Islam, Assistant on behalf of the respondents with Mr. Usman Ghani, Sr. GP present. Arguments could not be heard due to incomplete Bench owing to the promulgation of KPK Ordinance No. II of 2013. To come up for arguments on 12.12.2013.

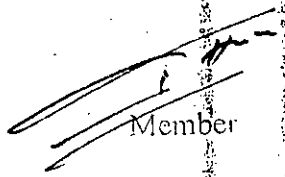

Chairman

Appeal No. 416/2012

6.6.2012

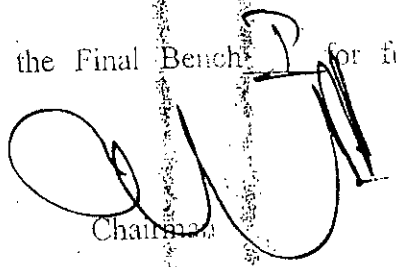
Counsel for the appellant present and heard. Contends that the appellant has been removed from service vide the impugned order dated 4.7.2011 received by him in the month of December 2011. While working as Sub Engineer, the appellant applied for extra ordinary leave without pay. He was granted said EOL. The leave was extended from 1.6.2009 to 15.8.2010. In the mean time the appellant got seriously ill and remained on bed. Certain notices were issued but these were never received by the appellant. The appellant was sent to Standing Medical Board for examination on 22.1.2011. Without waiting for report of the Standing Medical Board, absence notice of the appellant was published in newspapers. Without issuing any show cause notice or conducting any inquiry vide the impugned order dated 4.7.2011 the appellant was removed from service, however, the order was not communicated to the appellant. The appellant when attended the office after availing his leave in the month of December, he came to know about the order of his removal from service. The appellant preferred a departmental appeal on 26.12.2011 but with no response. Counsel for the appellant further contended that the appellant has been removed from service without fulfilling the legal requirements. Moreover, the order of removal has been made from retrospective effect which is illegal. The appellant has never committed any act or omission which could be termed as mis-conduct. His illness was not willful but due to his illness. Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 12.9.2012 for submission of written reply.

Appellant deposited
process fee & Security
Rs. 1800/- Bank Receipt
attached with file.


Member

6.6.2012

This case be put before the Final Bench for further proceedings.


Chairman

FORM "A"

FORM OF ORDER SHEET

Court of.....

Case No. 416 of 2012

No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
1-	31/03/2012	<p>The appeal of Mr. Iftikhar Ahmad presented today by Mr. Ijaz Anwar Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	5-4-2012	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-5-2012</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3-	18.5.2012	<p>Counsel for the appellant present and requested for adjournment. Case adjourned to 6.6.2012 for P-H.</p> <p style="text-align: right;"><i>[Signature]</i> Member</p>

**BEFORE THE KHYBER PAKHTUNKWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No. 418/2012

Iftikhar Ahmad, Ex- Sub Engineer T / Well Irrigation Sub-
Division Peshawar.

(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Peshawar and others.

Respondents

INDEX

S. No.	Description of Documents	Annexure	Page No.
1	Memo of Appeal & Affidavit		1-4
2	Application for condonation of delay		4A-4B
3	Order dated 17.11.2006	A	5-6
4	Medical Certificate and Absence Notices	B & C	7-12
5	Applications and forwarding letter	D & E	13-15
6	Letters dated 22.01.2011, 31.03.2011 & 28.04.2011	F, G & H	16-18
7.	Absence Notices and advertisement	I & J	19-22
8.	Order of Removal	K	23
9.	Departmental Appeal	L	24
	Vakalatnama		

Appellant

Through


IJAZ ANWAR
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 416 /2012

Khyber Pakhtunkhwa
Service Tribunal
Peshawar
No. 407
Date 31-03-12

Iftikhar Ahmad, Ex- Sub Engineer T / Well Irrigation Sub-
Division Peshawar.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation
Department Peshawar.
3. Chief Engineer (South) Irrigation Department Khyber
Pakhtunkhwa Peshawar.

(Respondents)

Appeal under section 4 of the Service Tribunal Act, 1974 read with section 10 of the Khyber Pakhtunkhwa (then NWFP) Removal from Service (Special Powers) Ordinance, 2000 against the Office order No. 1478-82 dated 4.7.2011 communicated to the appellant in the month of December, 2011 whereby the penalty of Removal from Service has been awarded w.e.f 16.8.2010 against which the departmental appeal dated 26.12.2011 was not responded so far.

~~Handwritten~~
~~Signature~~
3/3/12

Prayer in Appeal:

On acceptance of this appeal the impugned order dated 04.07.2011 may please be set aside and the appellant may be reinstated in service with full back wages and benefit of service.

Respectfully Submitted:

1. That on the recommendation of the Khyber Pakhtunkhwa Public Service Commission the appellant was initially appointed as Sub-Engineer (BPS-11) in the Irrigation Department vide order dated 17-11-2006. (Copy of order dated 17-11-2006 is attached as Annexure A).

2. That ever since his appointment the appellant was performing his duties as assigned to him with full devotion and honesty and there was no complaint whatsoever regarding his performance.
3. That while working in the said capacity in the year 2008, the appellant applied for extra ordinary leave without pay, the application was accepted and he was granted EOL, the leave was extended from 16-08-2009 to 15-08-2010.
4. That in the mean time the appellant got seriously ill, he was due to which he was unable to resume his duties as he remained on bed. In the meantime certain notices were issued regarding absence to the appellant however, these were never received to the appellant. (Copies of Medical Certificate and Notices are attached as Annexure B & C).
5. That it is pertinent to mention that the appellant duly applied for medically leave on 08-01-2011 which was duly forwarded on 12-01-2011 and again on 25.1.2011. (Copies of the applications and forwarding letter are attached as Annexure D & E).
6. That thereafter, the appellant case was sent to Standing Medical Board for examination on 22-01-2011, thereafter letter dated 31-03-2011 and 28-04-2011 were sent to DG Health regarding decision of the standing Medical Board (Copies of letters dated 22.1.2011, 31.03.2011 & 28.4.2011 are attached as Annexure F, G & H).
7. That thereafter without waiting for the report of the Medical Board absence notice of the applicant was published in the newspapers. (Copies of the absence notices and advertisement are attached as Annexure I & J).
8. That without issuing any show cause or conducting any enquiry vide order dated 04-07-2011 the appellant was removed from service, however, the order of removal was not communicated to the applicant. (Copy of the order of Removal is attached as Annexure K)
9. That since the applicant when attended the office after availing his leave in the month of December, came to know about the order of his dismissal from service.
10. That soon after the knowledge of his dismissal the applicant filed appeal on 26-12-2011, however it was not respondent till

date. (Copy of the departmental appeal is attached as Annexure L).

11. That the Notification whereby the appellant was awarded the major penalty of Removal from service and the rejection order are liable to be set-aside inter alia on the following grounds.

Grounds of Appeal:

- A. That the appellant has not been treated in accordance with law.
- B. That all the proceedings conducted against the appellant were violative of law and against the mandatory provisions of Khyber Pakhtunkhwa (then NWFP) Removal from Service (Special Powers) Ordinance, 2000, the Notification impugned is thus liable to be set at naught.
- C. That no proper procedure as required by the law was followed before removing the applicant from service the no inquiry was conducted, the applicant was not served with any charge sheet or show cause. Hence all the proceeding, are defective in the eye of law and legally no penalty can be imposed on basis of defective proceed.
- D. That no show cause or enquiry was ever served upon the appellant before awarding his penalty of Removal from service.
- E. That the applicant was not provided with opportunity of hearing before awarding him the major penalty of removal from service.
- F. That the order of removal is made from retrospective effect which is illegal.
- G. That the appellant duly applied for medical leave after expiry of EOL his case was forward to Standing Medical Board, the authority should have waited for the decision of Standing Medical Board, however, instead of waiting for the Medical Board, the appellant was illegally removed from service.
- H. That the appellant was never committed any act or omission which could be termed as misconduct his absence was not willful but was due to his illness.

- I. That the appellant has at his credit a long service, serving the department since 1987, the penalty imposed is too harsh and has brushed aside his long service career.
- J. That the appellant never absented himself willfully he has duly applied for leave in time, however was never communicated any letter refusing the leave.
- K. That the appellant is jobless since his illegal removal from service.
- L. That the appellant seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this appeal.

It is therefore prayed that on acceptance of this appeal the impugned **order dated 04.07.2011** may please be set aside and the appellant may be reinstated in service with full back wages and benefit of service

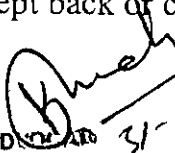

Appellant

Through


IJAZ ANWAR
Advocate Peshawar.

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above appeal are true and correct and that the appellant is jobless since his illegal removal from service, nothing is kept back or concealed from this Honourable Tribunal.


31-5-12
ATTESTED
WALID MAHMOOD ADNI
OATH COMMISSIONER
PESHAWAR HIGH COURT


Deponent

**BEFORE THE KHYBER PAKHTUNKWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No. 416/2012

Iftikhar Ahmad, Ex- Sub Engineer T / Well Irrigation Sub-Division Peshawar.

(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

**Application for condonation of delay if any in
filing the above noted Appeal**

Respectfully Submitted:

1. That the appellant has filed the accompanied service appeal in which no date has been fixed so far.
2. That the appellant prays for the condonation of delay in filling the above noted appeal inter alia on the following grounds: -

Grounds of Application:


- A. That the appellant duly applied for Medical Leave vide application dated 08.01.2011 he was of bonafide belief that his medical leave has been sanctioned. After gaining Health the appellant when went to joined duty the month of December, 2011; he was told that he has been removed from service 04.07.2011. Since the order of removal was never communicated to the appellant in time, therefore, the delay if any is condonable.
- B. That the proceeding conducted against the appellant are illegal, void and nullity in the eyes of law, no inquiry has been conducted nor the appellant has been given any opportunity of hearing, before awarding punishment to the appellant, no notice was served upon the appellant, before awarding him punishment. Even the order of removal is made with retrospective effect which is illegal and nullity in the eye of law. Thus the whole proceedings are nullity in the eye of law and hence no period of limitation run against an order based on illegal / defective proceedings.

- C. That the delay if any was not because of negligence of the appellant but it was due to the reluctant behavior of the respondents that they never communicated the removal order to the appellant.
- D. That the appellant never remained negligent while pursuing his remedy thus the delay if any is condonable.
- E. That valuable rights of the appellant are involved in the case hence this Service Appeal deserves to be decided on merit.
- F. That the delay if any was not willful or contumacious hence deserve leniency.
- G. That it has been the consistent view of the superior courts that causes should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 & 2003 PLC (CS) 769.

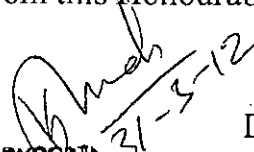
It is therefore prayed that on acceptance of this application the delay in filling the above appeal may please be condoned.


Applicant

Through


IJAZ ANWAR
Advocate Peshawar

I, do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.


31-5-12
WITNESSED
SALID MAHMOOD ADVOCATE
OATH COMMISSIONER
PESHAWAR HIGH COURT


Deponent

Registered

3

OFFICE OF THE CHIEF ENGINEER (O&M)
IRRIGATION DEPARTMENT NWFP
PESHAWAR

Annexure "A"

No. 10749-66 /IB/A

Date Peshawar, the 17/11/2006

To

1. Muhammad Mumtaz S/O Sardar Mohammad Miskin
Village Kaloor P.O. Banda Pir Khan Tehsil and
District Abbottabad.
2. Jamshed Akram S/O Sanauallah
Sana Cement Traders Waziristan Market
Banna Road Tank Tehsil and District Tank.
3. Mr. Abdul Wakeel S/O Zar Wali Khan
Village Gromail P.O. Drosh Tehsil and District
Chitral.
4. Mr. Saeed Gul S/O Qadar Gul
Frontier General Store Lalazar Market
Sector E-2 Hayatabad Phase-I Peshawar.
5. Mr. Ifikhar Ahmad S/O Habib Sher
Village Ismail Kor Tehsil Pandiali
P.O. Ekka Ghund Mohmand Agency.
6. Mr. Musharaf Shah S/O Yousaf Shah
Village Lal Zarin Mian Kalay P/O Mandani
Tehsil and District Charsadda.
7. Mr. Aftab Alam S/O Khurshid Anwar
Mohallah Chamrang Abad Village and P.O
Utmanzai Tehsil and District Charsadda.

Subject:-

**APPOINTMENT OF SUB ENGINEER BS-11 IN IRRIGATION
DEPARTMENT ON CONTRACT BASIS**

Consequent upon the recommendations of the NWFP Public Service Commission vide his letter No. SRB/34/63051 dated 27-09-2006 & No. SRB/34/63051, dated 09/10/2006 received through Secretary to Govt of NWFP Irrigation & Power Deptt; letter No. SO(E)/Irr: & Power/4-4/05, dated 03/10/2006 & No. SO-(E) I&P/4-4/05, dated 12-10-2006, you are hereby offered the post of Sub Engineer BS-11 purely on contract basis subject to the following conditions :

1. Your service will be governed under the Govt of NWFP Contract Policy 2002, issued vide Secretary to Govt of NWFP Finance department No. FD(SOSR-II)12-1/2002, dated 26-10-2002, read with Establishment and Administration Department circular No. SO(Regulation)(E&AD)1-13/2005, dated 10/8/2005.

- ②
2. You will be granted the minimum of BS-11 (2980-200-8980) with usual allowances as admissible under the Govt of NWFP Contract Policy 2002.
 3. The appointing authority can terminate the contract on two months notice or two months salary in lieu thereof.
 4. You will be provided facilities of contribution of provident fund as admissible under the contract policy.
 5. You will not contribute G.P fund and shall not be entitled for pension and gratuity.
 6. Any terms and conditions issued by the Govt hereafter in this regard will also be binding upon you.
 7. If you are willing to accept this offer of appointment on the above terms and conditions of appointment you should report for duty to the office of the undersigned.

If this offer of appointment on contract basis on the above terms and conditions is acceptable to you. You should report arrival for duty on or before 15-12-2006 to the office of the Chief Engineer (O&M) Irrigation Department Peshawar and produce the following original documents: -

- a. Domicile Certificate.
- b. Medical Fitness Certificate.
- c. Educational Qualification Certificate
- d. That you are not a dismissed Government Servant.
- e. Character Certificate.
- f. An under taking on stamp paper of Rs.30/- duly attested by the oath commissioner to the effect that the offer of appointment is accepted on all the above terms and conditions.

In case the above noted documents and your reply to the acceptance of this offer is not received within stipulated period (i.e upto 15- 12 - 2006 the offer of appointment shall stand automatically null and void.

Uthman Khan
 Superintending Engineer
 Head Quarters 17/11/2006

C.C.

1. Director Recruitment Public Service Commission Phase-IV Hayatabad Peshawar with reference to his letter No.NWFP/PSC/SR8/34/63051 dated 9/10/2006. for information.
2. Section Officer (Estt.) Government of NWFP Irrigation and Power Department Peshawar with reference to his letter No.SO(E)lrr/4-4/05 dated 12/10/2006 for information.
3. Accountant General, NWFP, Peshawar.
4. Officials concerned.
 For information and necessary action.

Uthman Khan
 Superintending Engineer 17/11/2006
 Head Quarters

Ammeru "B"

5

Army Hospital

RS-51

Department

RECEIVED
H. H. KHAR ADMIT

DATE: 15-10-70 10:17:34
ORTHO PAEDIC

Severe Backache
in during walking.
numbness both legs.

4 Inflorax tab
 191 207
 Accurid
 banding myled 207
 Lined in body
 8 small long bones tab
 in ①

Advised complete bed rest
for ③ 3 months

Medical Officer
A. N. H. L. R. H. P.

LRI 1-20,000 Pads-20 1-200

Handwritten signature/initials

8

King Hospital

RSB

Orthopaedic Department

83

15-10-10 10:17:34

ORTHOPAEDIC

3952341110

IBTIKHAR AHMED

Severe Bursitis
Anxiety
numbness both legs

Ly Inflammation tab
191 20
Acacia
banding myled 20
Landing
Smelling bag
Bones tab
111 20
111 20
111 20

Advised complete bed rest
for (13) three months

ROBERT H. P. S.

Handwritten signature

13/10/10

9

Counter - Plain CPL

Room: 85

09-DEC-10 12:23:42

ORTHOPAEDICS

O/A pro-lapse device
to support ^{ly ly} both legs
in business

Rx myled ^{CS}
ORL 1.81 207
broad ^{CS}
① 207

SA 2, 2 Lybromate ^{CS}
3 3/4
3 3/4

W
CR
12/2

Advised complete bed
rest for ③ 3 months

Medical Officer
R. H. H. H. Post

Aria
⑥

Annexure "C"

10

OFFICE OF THE,
SUPERINTENDING EN
CENTRAL IRRIGATIO

No. 1003

Dated Peshawar the 02/11/2010.

To,

The Chief Engineer(O&M),
Irrigation Department,
Peshawar.

Subject:-

OFFICE ORDER.

The Executive Engineer Tubewells Irrigation Division Peshawar has reported that on expiry of 365 days extra ordinary leave (without pay) on 15/08/2010 sanctioned in favour of Mr. Iftikhar Ahmad Sub Engineer, vide your office Order No. 7302/IB/A/1902-PF dated 19/09/2009 has not reported for duty till date.

The Executive Engineer, Tubewells Irrigation Division Peshawar has further stated in the referred report that necessary disciplinary action against the defaulter for his willful absence from Government duty may be initiated please.

[Signature]
SUPERINTENDING ENGINEER
PH: No. 9242115.

Copy to Executive Engineer, Tubewells Irrigation Division Peshawar with reference to his letter No. 2232/A-E, dated 29/10/2010 for information and necessary action. He is further requested to supply a copy of Chief Engineer(O&M) Irrigation Department K.P.K. Peshawar bearing No. 7302/IB/A/1902-PF, dated 19/09/2009 as the same is not available in this office record please.

SUPERINTENDING ENGINEER.

[Handwritten notes and signatures in a box]

Registered AD

OFFICE OF THE CHIEF ENGIN
IRRIGATION DEPARTMENT KHY
PAKHTUNKHWA PESHAWAR.

NO. 8016-17/IB/A/1902

Dated Peshawar the 22/11/11

To

Mr. Ittikhar Ahmad
S/O Habib Sher, Vill:
Ismail Kot, Teh: Pandiali,
P.O. Ekkaghund Mohmand Agency.

Subject:- NOTICE FOR RESUMING DUTY AFTER EXPIRY OF LEAVE.

I am directed to state that you were granted 365 days Extra Ordinary leave w.s.f. 16-08-2009 to 15-08-2010 but on expiry of leave you have not reported arrival for duty without any authority which is an act of misconduct on your part.

You are hereby directed to attend the office within 15 days and explain the causes of your absence failing which disciplinary action will be taken against you under Removal from Service Special Power Ordinance 2000.

ADMINISTRATIVE OFFICER,
PH: NO. 9212118.

C.C.

Superintending Engineer Central Irrigation
Circle Peshawar w/r to his letter No. 1003/3-B, dated
01-11-2010, for information.

ADMINISTRATIVE OFFICER.

12

STAMPED.

OFFICE OF THE CHIEF ENGINEER
IRRIGATION DEPARTMENT KHYBER
PAKHTUNKHWA PESHAWAR.

NO. 10552-53/IB/A/1902-PF.

Dated Peshawar the 15/12/2010.

To

Mr. Iftikhar Ahmad,
B/O Habib Ullah, Vill: Ismail Kot,
Tehsil Raddiali, P.O. Likkaghund,
Muzaffargarh Agency.

Subject:- NOTICE FOR RESUMING DUTY AFTER EXPIRY OF LEAVE.

Ref, nec:- This office letter No. 801-17/IB/A/1902-PF.
dated 22-11-2010.

cc. 13

You were directed to resume duty, and explain the causes of your absence within 15 days of the receipt of this office letter under reference but no response has been received from your end.

You are hereby finally asked to resume duty forthwith and also intimate cogent reasons for your wellfounded absence otherwise action will be initiated against you under removal from service special Power ordinance 2000.

ADMINISTRATIVE OFFICER,
PH: NO. 9212318.

C.C.

SEN, Tubewells Irrigation Division Peshawar
He is requested to intimate response of the official.

ADMINISTRATIVE OFFICER.

Handwritten initials/signature

Handwritten notes and signatures:
attached
your
and
my
for
and

13

Annexure "D"

12-01-11

P.O. 163

Mr. A
Mr. B
Mr. C
Mr. D
Mr. E
Mr. F
Mr. G
Mr. H
Mr. I
Mr. J
Mr. K
Mr. L
Mr. M
Mr. N
Mr. O
Mr. P
Mr. Q
Mr. R
Mr. S
Mr. T
Mr. U
Mr. V
Mr. W
Mr. X
Mr. Y
Mr. Z

The Chief Engr Brigation Dept. 04
 Khyber Pakhtunkhwa Peshawar,

Subject - Medical leave.

R/Sir,
 Mr. M. A.

It is most respectfully inform you
 that I am suffering from Severe Back ach,
 Because of which I have pain in both legs
 during walking and it is not possible
 for me to start my duty, as per
 Doctor instructions, which may increase the
 pain of my legs please find attached M.C.

Therefore it is requested in your kind
 control to accept my medical leave and as
 soon as I get healthy, I will join my duty.

I shall be very thankful to you.
 Yours sincerely,
 [Signature]

Date - 8/01/2011

Atiqul Haq Ahmad

(64)

to

The chief Engr Irrigation Dept
OSM Pakhtoonkhwa Peshawar.

Subject: Medical leave.

R/Sir

It is most respectfully inform you
that I am suffering from severe backach
because of which I have pain in both legs,
during walking and it is not possible for me
to start my duty, as per doctor instructions,
which may increase the pain of my legs, and
has been sent to you medical c
Therefore it is requested in your kind control to
accept my medical leave and as soon as I get
healthy, I will join my duty.

I shall be very thankful to you

Yours Sincerely

Handwritten signature

M. I. Khar Ahmad.

Handwritten signature

A/Sir

Sub Engr - T/well Irrigation Sub division
Peshawar - Warsek Road

15

No. 057 /P-E
Te.

Dated Peshawar the 12/01/2011.

The Chief Engineer (O&M)
Irrigation Department
Peshawar.

Subject:-

MEDICAL LEAVE.

Reference:-

Your letter No. 10552-53/IB/A/1902-PF
dated 15/12/2010.

This office No. 3148/2- E dated 24/12/2010.

An application in respect of Mr. Iftikhar Ahmad
Sub-Engineer requesting for leave on Medical grounds for the period
of 3 months w.e.f. 15-11-2010 is submitted herewith for your kind
perusal and further necessary action please.

Enclosure

As above

[Signature]
Executive Engineer
Tubewells Irr. Division
Peshawar.

A/B
9/2 SA
17/1/2011

Sl. No.	Name	Date
1	SWC	
2	SWO	
3	SG	
4	A.O.	

SA

[Handwritten mark]

[Handwritten signature]

C2
13/01



OFFICE OF THE CHIEF ENGINEER

IRRIGATION DEPARTMENT (O&M) WING KPK PESHAWAR

Phone No: 091-9212118 Fax No. 091-9212652

16

Annexure 'F'

701/2011

No. 576-80 /IB/A/1902-PF

Dated Peshawar the 22-1-2011

To

The Director General,
Health Services
Khyber Pakhtunkhwa Peshawar,

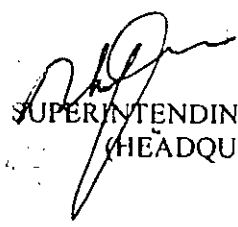
Subject:

STANDING MEDICAL BOARD IN RESPECT OF MR. IFTIKHAR AHMAD SUB ENGINEER.

It is stated that one Mr. Iftikhar Ahmad Sub Engineer was granted 365 days extra ordinary leave. On expiry of leave he has found absent from Govt. duty from 16-08-2010 till date. Now he has produced OPD slips bearing No.4932341110 dated 15-11-2011 and No. 6172451210 dated 09-12-2010 from Lady Reading Hospital Peshawar (copies enclosed).

You are requested to examine the case through Medical Board and submit report to this office for further necessary action.

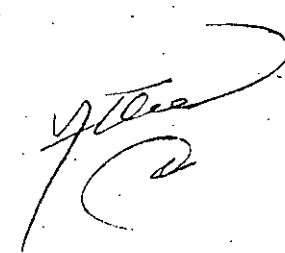
Encl: As above


SUPERINTENDING ENGINEER
(HEADQUARTER)

Copy to the:-

1. Superintending Engineer, Central Irrigation Circle, Peshawar.
2. Executive Engineer, Tubewells Irrigation Division Peshawar. He is requested to inform the official to appear before the Medical Board as and when fixed by the board.
3. Medical Superintendent Lady Reading Hospital Peshawar alongwith OPD slips No. 4932341110 dated 15-11-2010 and No. 6172451210 dated 09-12-2010. for verification and return.
4. Mr. Iftikhar Ahmad Sub-Engineer S/O Habib Sher village Ismail Kot Tehsil Pandiali, P.O. Eikkaghund, Mehmmand Agency.


SUPERINTENDING ENGINEER
(HEADQUARTER)



SA
SK1
25/11/11
A/M
Iftikhar Ahmad,
Sub Engr. T/well irrigation Sub division
Peshawar. Warsak road

(17)

Annexure "G"



OFFICE OF THE CHIEF ENGINEER
IRRIGATION DEPARTMENT (O&M) WING KHYBER PAKHTUNKHWA
PESHAWAR

Phone No. 091-9212118 Fax No. 091-9212652

No 7692-93/IB/A/19-2-PF

Dated Peshawar the ³¹ /03/2011

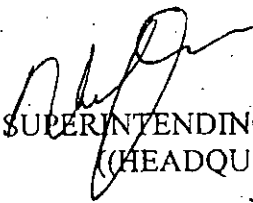
To

The Director General
Health Services Khyber
Pakhtunkhwa Peshawar.

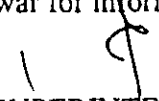
Subject:- STANDING MEDICAL BOARD IN RESPECT OF Mr. IFTIKHAR AHMAD SUB ENGINEER

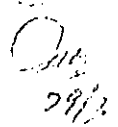
Ref:- This office No. 1576-80/IB/A/1902-PF dated 22-1-2011, Ch. 22

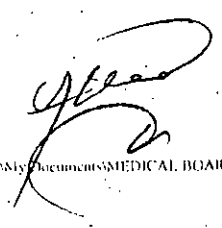
Your attention is invited to the communication under reference and it is once again requested to communicate decision of standing Medical Board for proceeding further in the matter please.


SUPERINTENDING ENGINEER
(HEADQUARTER)

Copy to the M/S LRH Hospital Peshawar for information


SUPERINTENDING ENGINEER
(HEADQUARTER)


29/3



18

Annexure H

OFFICE OF THE CHIEF ENGINEER
IRRIGATION KHYBER PAKHTUNKHWA

NO. 10028-29/IB/A/1902-PF,

Dated Peshawar the 28/4/2011.

To

The Director General,
Health Services Khyber
Pakhtunkhwa Peshawar.

Subject:- STANDING MEDICAL BOARD IN RESPECT OF
MR. IFTIKHAR AHMAD SUB ENGINEER.

Ref'nce:- 1. This office No. 1576-80/IB/A/1902-PF
dated 22-1-2011.

2. This office No. 7692-93/IB/A/1902-PF,
dated 31-3-2011.

Your attention is invited to the communication
under reference and it is requested to communicate decision of
Standing Medical Board for proceeding further in the matter.

[Signature]
SUPERINTENDING ENGINEER
(HEADQUARTERS)

C.C.

Copy to the Medical Superintendent

L.R.H Peshawar for information.

[Signature]
SUPERINTENDING ENGINEER
(HEADQUARTERS)

[Handwritten initials]
26/4

[Handwritten signature]

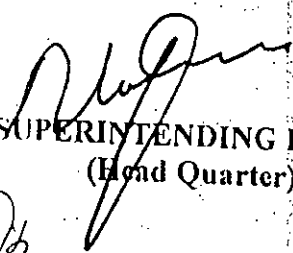
(19)

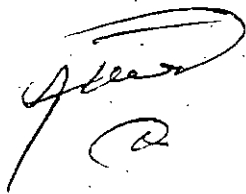
Annexure "I"

ABSENCE NOTICE

You Mr. Htikhar Ahmad Sub Engineer S/O Habib Sher village Ismail Kot Tehsil Pandiali Post Office Ekkagund Mohmand Agency is absent from duty without prior permission w.e.f 16/08/2010 of the expiry of 365 days leave. You were directed to resume duty vide this office Registered AD letter No.8016-17/IB/A/1902-PF dated 22/11/2010 and No.10552-53/IB/A/1902-PF dated 15/12/2010 but instead of resuming duty you submitted medical certificate without application on proper form for grant of three months leave from 15-10-2010 and you still found absent without any intimation.

You are hereby directed to furnish cogent reason for willful absence period at your ownself within 15 days before resuming duty otherwise your service will be dismiss under Removal from Service Special Power Ordinance 2000.


SUPERINTENDING ENGINEER
(Head Quarter)


@

نوٹس غیر حاضری

25

آپ مسی افتخار احمد سب انجینئر ولد حبیب شیر گاؤں اسماعیل کوٹ تحصیل
پنڈیالی ڈاکخانہ یکہ غنڈ مہند ایجنسی 365 دن لمبی رخصتی ہونے کے بعد 16/08/2010 بغیر کسی اجازت
کے غیر حاضر ہے آپکو بذریعہ رجسٹرڈ چھٹی نمبر 8016-17/IB/A/1902-PF اور نمبر 22/10/2010 اور نمبر 10552-53/IB/A/1902-PF بمورخہ 15/12/2010
آپ کے گھر کے پتہ پر ارسال کئے کہ آپ 15 دن کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائے۔ آپ نے ڈیوٹی
حاضری کی بجائے مورخہ 15/10/2010 کو تین مہینے میڈیکل سرٹیفکیٹ بغیر درخواست کے ارسال کیا اور
تا حال ڈیوٹی سے غیر حاضر ہے۔

آپکو نوٹس ہڈ کے اشتہار کے ذریعے مطلع کیا جاتا ہے کہ آپ 15 دن کے اندر
اندر بذات خود اپنی غیر حاضری کی ٹھوس وجوہات ڈیوٹی پر حاضر ہونے سے پہلے بیان کریں بصورت دیگر
آپ کے خلاف حکومت صوبہ سرحد کی سرورسز پر خاتگی آرڈیننس 2000 کے تحت کارروائی کی جائے گی اور آپکو
ملازمت سے برخاست کر دیا جائے گا۔

سیرٹیفنگ انجینئر (ہیڈ کوارٹر)

دفتر چیف انجینئر (اد اینڈ ایم)

محکمہ آبپاشی خیبر پختونخوا

6/1/18

Annexure 'K'

23



OFFICE OF THE CHIEF ENGINEER (SOUTH)
IRRIGATION DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR
Phone No. 091-9212118 Fax No. 091-9212652

No. 1178-82 /IB/A/1902-PF

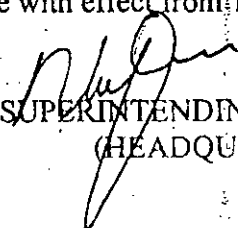
Dated Peshawar the 07/07/2011

OFFICE ORDER

WHEREAS, Mr. Iftikhar Ahmad Sub Engineer attached to Tube well Irrigation Division Peshawar was granted 365 days extra ordinary leave (without pay) with effect from 16-8-2009 to 15-8-2010 on expiry of leave he did not resume duty and absented himself from 16-8-2010 without any authority.


AND WHERE AS, Mr. Iftikhar Ahmad Sub Engineer was directed to resume duty through this office registered AD letter No. 8016-17 /IB/A/ 1902-PF dated 22-11-2010 and No. 10552-53/IB/A/ 1902-PF dated 15-12-2010 on his home address but he did not response with in stipulated period and finally notice issued through daily "Mashriq" dated 16-5-2011 and daily "Ajj" dated 17-6-2011 directing him to resume duty within 15 days of the publication of the notice and also explained cogent reasons of his willful absence, failing which he will render himself liable to Removal from Service without any further notice but he did not Join his duty uptill now.

NOW THEREFORE, in exercise of power conferred under Removal from Service (Special Power) Ordinance 2000 the competent authority has been pleased to remove Mr. Iftikhar Ahmad Sub Engineer from Govt: service with effect from 16-8-2010 (FN).


SUPERINTENDING ENGINEER
(HEADQUARTER)

Copy to the:-

1. Superintending Engineer Peshawar Irrigation Circle Peshawar.
2. Executive Engineer Tube well Irrigation Division Peshawar.
3. Accountant General Khyber Pakhtunkhwa Peshawar.
4. Mr. Iftikhar Ahmad Sub Engineer S/O Habib Sher Village Ismail Kot Tehsil Pandiali P.O Ekkaghund Mohmand Agency for information.


SUPERINTENDING ENGINEER
(HEADQUARTER)

24

Annexure L

To,

The chief Engineer (South) Irrigation
Department Khyber Pakhtunkhwa Peshawar

Application for Reinstatement of Sub Engineer

It is most respectfully informed you, that I had taken 730 days leave, without pay.

After the Expiration of the above Mentioned leaves I was medically offset and I visited doctor. He advised me to take complete rest to avoid any further Medical problems in my body and I sent my Medical certificate to the honorable Chief Engineer and Executive Engineer T/well irrigation Peshawar. But my medical was not accepted and my medical certificate was sent to the office of Directorate General Health Services Khyber Pakhtunkhwa Peshawar without informing in action taking in one-sided and removed from the service.

Therefore I requesting in your great honors to reinstate me to use my services for the government.

For your information I belong to very backward area and our leaving standard is very poor and I not received complete information from my office

Beside thus my famical economic condition is very poor.

Therefore I once again requesting in your great honor to reinstate me to serve for my Government and my Family

26/12/2011

Your sincerely,

Iftikhar Ahmad

Sub Engineer

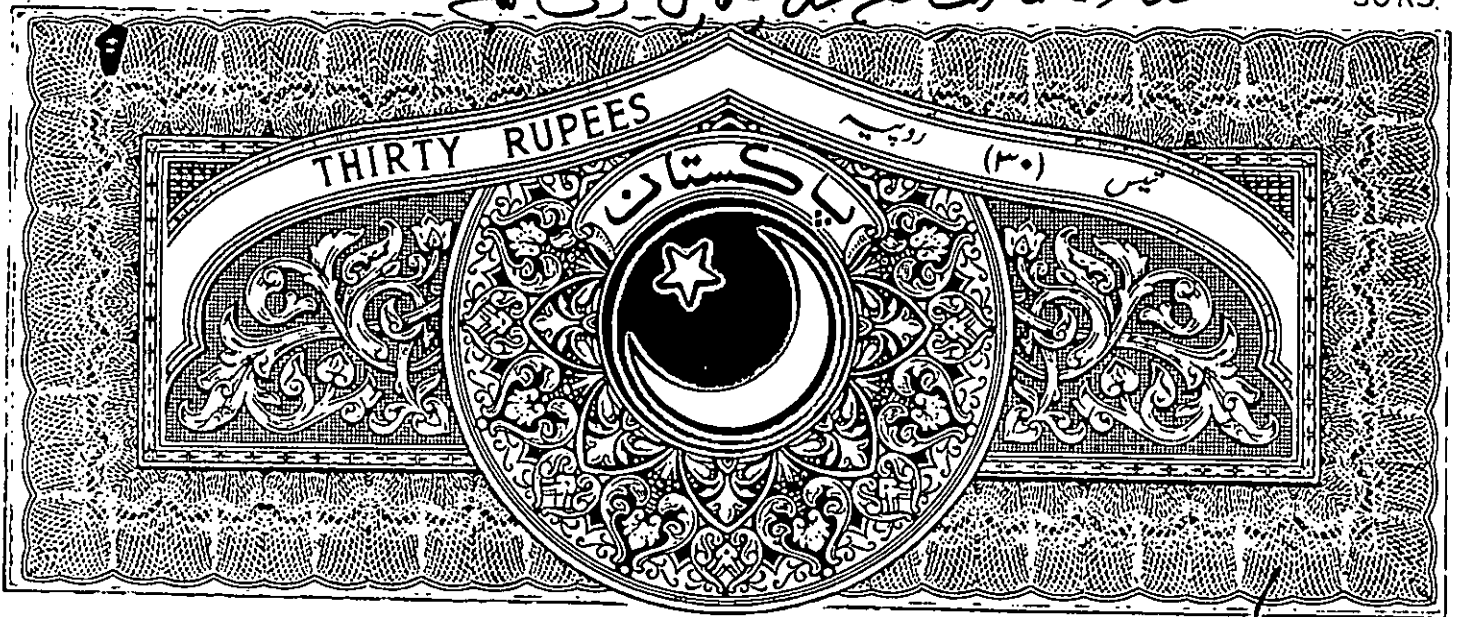
T/Well Irrigation sub Divison Peshawar
KPK Pakistan

[Handwritten marks and signatures]
A/B
A
27/12

OFFICE. IRR: 26-12-011

Visit Date: 28/23 Date: _____

Section	Date
C.E.	RWC
T.O.	RVO
S.P. (I/O)	NO
A.O.	ADD ✓



لہذا سب سے پہلے

اقمار احمد تمام حکومت و غیرہ
تہہ اجماعاً اہل درہ جیب شہر لہہ و سما علی درہ ہان ضلع ڈی ایف ایف گنڈا گنڈا
رضیہ راہوں۔ خلفاً اہل درہ جیب شہر لہہ و سما علی درہ ہان ضلع ڈی ایف ایف گنڈا گنڈا

مقامی سے قلم لہوں۔ مذکورہ قلم طرف سے غرض قلم

کسان شہر و جیب شہر لہہ و سما علی درہ ہان ضلع ڈی ایف ایف گنڈا گنڈا
تہہ اجماعاً اہل درہ جیب شہر لہہ و سما علی درہ ہان ضلع ڈی ایف ایف گنڈا گنڈا
رضیہ راہوں۔ خلفاً اہل درہ جیب شہر لہہ و سما علی درہ ہان ضلع ڈی ایف ایف گنڈا گنڈا

نمبر قلم سہ ماہی - 17101-0871960-5
نمبر قلم سہ ماہی - 21403-6158149-3
نمبر قلم سہ ماہی - 21403-8881069-9

Handwritten signatures and stamps including 'Aslan', '10/12/11', 'No 406', and 'Sahib-ul-Intizar'.

POWER OF ATTORNEY

In The COURT of IC R R Service Tribunal Peshawar
Hikhar Ahmad

For:
Plaintiff
Appellant
Petitioner
Complainant

VERSUS

Court of IC R R & H

Defendant
Respondent
Accused

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

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

MR. IJAZ ANWAR ADVOCATE, HIGH COURT, PESHAWAR

Sajid Amin Advocate my true and lawful attorney, for me in my name and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any appellate 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 sub-poena and to apply for and get issued and arrest, attachment or other execution, 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 authorities hereby conferred on the Advocate whenever 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 do all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may per 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 dismissed in default, if it be proceeded ex-parte the said counsel shall not held responsible for the same. All cost awarded in favour shall the right of Counsel or his nominee, and if awarded against shall payable by me/us.

IN WITNESS whereof I/We have hereto signed at Peshawar the _____ day to _____ in the year _____
Executant/Executants Bun Shams
Accepted subject to the terms regarding fee _____

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, 4th Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph: 091-52772054 Mobile: 0333-9107225

Accepted

Shams

310

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.416/2012

Iftikhar Ahmed Ex-Sub Engineer
Tubewell Irrigation Division Peshawar

(Appellant)

VERSUS

1. Chief Secretary Govt: of Khyber Pakhtunkhwa,
Peshawar.

2. Secretary to Govt of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar.

(Respondents)

3. Chief Engineer (South), Irrigation Department,
Peshawar.

Subject: - **JOINT PARA WISE COMMENTS IN APPEAL NO.416/2012 FILED BY MR. IFTIKHAR AHMED SUB ENGINEER V/S SECRETARY IRRIGATION AND OTHERS ON BEHALF OF RESPONDENTS NO.1-3**

Respectfully Sheweth

Preliminary objections

- 1) That the appeal is time barred.
- 2) That the appellant has got no locus standi.
- 3) That the appellant has not come to the Service Tribunal with clean hand.
- 4) That the appeal is not maintainable in its present form.
- 5) That the appeal is bad for mis joinder of cause of action and non joinder of parties.

FACTS

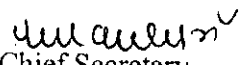
1. Pertain to record hence no reply.
2. The appellant has served in the Department w.e.f 6-2-2007 to 31-7-2008 without break, while the remaining period i.e 1-8-2008 to 15-8-2010 spent on leave and he remained absent from duty w.e.f 16-8-2010.
3. As per Para-2 above.
4. Incorrect the absence notices were issued prior to submission of Medical Certificate through Registered Post vide No.8016-17/IB/A/1902-PF dated 22-11-2010 and No.10552-53/IB/A/1902-PF dated 15-12-2010 which were properly delivered at his home address and the same had not been received back. (Annex-I).
5. That on receipt of Medical Certificate the appellant was referred to the Director General Health Service for proper check up through Medical Board vide this office letter No.1576-80/IB/A/1902-PF dated 22-1-2011 but the appellant failed to appear before the Board.
6. As per Para -5 above.
7. Absence Notice was issued on the home address of the applicant as well as through press due to non response of appellant regarding production of Medical Certificate as the appellant had badly failed to provide further Medical Certificate in support of his absence period.


5

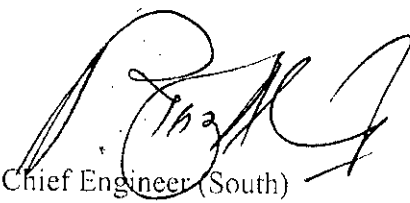
3/11

8. Not agreed the appellant has been treated under proper rules (Annex: II)
9. The appellant was removed from Service due to his willful absence from duty.
10. No comments.
11. That the appeal of the appellant is not maintainable on the following grounds: -
 - a) That the appellant was treated according to rules/laws.
 - b) That the case of the appellant was dealt with according to the instruction contained in Para 8 above.
 - c) All codal formalities required for action against the Govt. Servant who was willfully absent from duty has been full-filled in the case.
 - d) No show cause notice is required in the instruction contained in Para 8 above.
 - e) The appellant being willfully absent from duty therefore no question of opportunity of personal hearing arises.
 - f) The order was treated effective from the date from which the official remained absent.
 - g) That appellant has not provided further Medical Certificate on expiry of previous Medical Certificate.
 - h) That the appellant has served the Department for about 18 months service therefore not entitled for leave under the rules.
 - i) As per Para-h above.
 - j) As per Para-h above.
 - l) As per Para-h above.

It is very humbly prayed to dismiss the appeal with cost of appellant.


Chief Secretary
Govt: of Khyber Pakhtunkhwa
(Respondent No. 1)


Secretary to Govt:
of Khyber Pakhtunkhwa
Irrigation Department Peshawar.
(Respondent No. 2)


Chief Engineer (South)
Irrigation Department Peshawar
(Respondent No. 3)

Registered AD

OFFICE OF THE CHIEF ENGINEER,
IRRIGATION DEPARTMENT KHYBER,
PAKHTUNKHWA PESHAWAR.

19
18
15
20

NO. 8016-17 / IB/A/1902-PF,

Dated Peshawar the 22/11/2010.

To

Mr. Istikhar Ahmad
S/O Habib Sher, Vill:
Ismail Kot, Teh: Pandiali,
P.O. Ekkaghund Mohmand Agency.

Subject:- NOTICE FOR RESUMING DUTY AFTER EXPIRY OF LEAVE.

I am directed to state that you were granted 60,
365 days Extra Ordinary leave w.o.f. 16-08-2009 to 15-08-2010
but on expiry of leave you have not reported arrival for
duty without any authority which is an act of misconduct on
your part.

You are hereby directed to attend the office
within 15 days and explain the causes of your absence failing
which disciplinary action will be taken against you under
Removal from Service Special Power Ordinance 2000.

C.C.

7/2 ADMINISTRATIVE OFFICER,
PH: NO. 9212118.

Superintending Engineer Central Irrigation
Circle Peshawar w/r to his letter No. 1003/3-E, dated
01-11-2010, for information.

7/2
Gib
11/11
ADMINISTRATIVE OFFICER

RECORDED.

OFFICE OF THE CHIEF ENGINEER,
IRRIGATION DEPARTMENT KHYBER,
PAKISTAN PESHAWAR.

20
19

NO. 10552-53/IB/A/1902-PF,

Dated Peshawar the 15/12/2010.

To

Mr. Iftikhar Ahmad,
S/O Habbib Khan, Vill: Ismail Kot,
Tehsil Mandialli, S.O. Likkaghund,
Muhmand Agency.

Subject:- NOTICE FOR RESUMING DUTY AFTER EXPIRY OF LEAVE.

Reference:- This office letter No. 801-17/IB/A/1902-PF,
dated 22-11-2010.

cc. 19

You were directed to resume duty and explain the causes of your absence within 15 days of the receipt of this office letter under reference but no response has been received from your end.

You are hereby finally asked to resume duty forthwith and also intimate cogent reason for your willful absence otherwise action will be initiated against you under removal from service special power ordinance 2000.

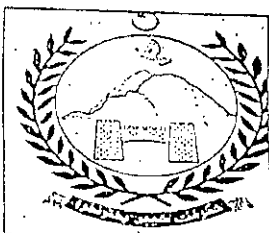
ADMINISTRATIVE OFFICER,
PH. NO. 9912318.

C.C.

XEN, Tubewells Irrigation Division Peshawar
He is requested to intimate response of the official.

ADMINISTRATIVE OFFICER.

13/12



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SOR-VI/E&AD/2-6
Dated Peshawar, the, 17th September, 2011

To

1. The Additional Chief Secretary, Planning & Development Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Additional Chief Secretary (FATA), FATA Secretariat, Peshawar.
3. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa.
5. All the Divisional Commissioners in Khyber Pakhtunkhwa.
6. All Heads of the Attached Departments in Khyber Pakhtunkhwa.
7. All the District Coordination Officers in Khyber Pakhtunkhwa and Political Agents in FATA.

Subject: KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 2011.

Dear Sir,

I am directed to invite your attention to the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 published in the Extraordinary issue of the Government Gazette of 16th September, 2011 (copy enclosed) and to state that the procedure to be adopted for proceeding against persons in Government Service under the new rules has been substantially changed. These rules also apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

2. Salient features of the new rules are as under:-

- (i) Doing away with Authorized Officer.
- (ii) Both competent and appellate authorities clearly defined.
- (iii) Providing express provision for personal hearing;
- (iv) Specifying duties of Departmental representative;
- (v) Recording statement of parties in the presence of accused and vice versa,
- (vi) Specific period for imposing penalty of withholding promotion or increments.
- (vii) Removal from service in cases of willful absence.

9. Procedure in case of wilful absence.---Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. Procedure to be followed by competent authority where inquiry is necessary.--- (1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary inquiry.

11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry *ex-parte*.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.416/2012

Iftikhar Ahmed Ex-Sub Engineer
 Tubewell Irrigation Division Peshawar

(Appellant)

VERSUS

1. Chief Secretary Govt. of Khyber Pakhtunkhwa,
 Peshawar.

2. Secretary to Govt of Khyber Pakhtunkhwa,
 Irrigation Department, Peshawar.

(Respondents)

3. Chief Engineer (South), Irrigation Department,
 Peshawar.

Subject: JOINT PARA WISE COMMENTS IN APPEAL NO.416/2012 FILED BY MR. IFTIKHAR AHMED SUB ENGINEER V/S SECRETARY IRRIGATION AND OTHERS ON BEHALF OF RESPONDENTS NO.1-3

Respectfully Sheweth

Preliminary objections

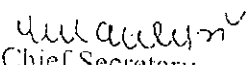
- 1) That the appeal is time barred.
- 2) That the appellant has got no locus standi.
- 3) That the appellant has not come to the Service Tribunal with clean hand.
- 4) That the appeal is not maintainable in its present form.
- 5) That the appeal is bad for mis joinder of cause of action and non joinder of parties.


FACTS


1. Pertain to record hence no reply.
2. The appellant has served in the Department w.e.f 6-2-2007 to 31-7-2008 without break, while the remaining period i.e 1-8-2008 to 15-8-2010 spent on leave and he remained absent from duty w.e.f 16-8-2010.
3. As per Para-2 above.
4. Incorrect the absence notices were issued prior to submission of Medical Certificate through Registered Post vide No.8016-17/IB/A/1902-PF dated 22-11-2010 and No.10552-53/IB/A/1902-PF dated 15-12-2010 which were properly delivered at his home address and the same had not been received back. (Annex-1).
5. That on receipt of Medical Certificate the appellant was referred to the Director General Health Service for proper check up through Medical Board vide this office letter No.1576-80/IB/A/1902-PF dated 22-1-2011 but the appellant failed to appear before the Board.
6. As per Para -5 above.
7. Absence Notice was issued on the home address of the applicant as well as through press due to non response of appellant regarding production of Medical Certificate as the appellant had badly failed to provide further Medical Certificate in support of his absence period.

8. Not agreed the appellant has been treated under proper rules (Annex: II)
9. The appellant was removed from Service due to his willful absence from duty.
10. No comments.
11. That the appeal of the appellant is not maintainable on the following grounds: -
- That the appellant was treated according to rules/laws.
 - That the case of the appellant was dealt with according to the instruction contained in Para 8 above.
 - All codal formalities required for action against the Govt. Servant who was willfully absent from duty has been fulfilled in the case.
 - No show cause notice is required in the instruction contained in Para 8 above.
 - The appellant being willfully absent from duty therefore no question of opportunity of personal hearing arises.
 - The order was treated effective from the date from which the official remained absent.
 - That appellant has not provided further Medical Certificate on expiry of previous Medical Certificate.
 - That the appellant has served the Department for about 18 months service therefore not entitled for leave under the rules.
 - As per Para-h above.
 - As per Para-h above.
 - As per Para-h above.

It is very humbly prayed to dismiss the appeal with cost of appellant.


Chief Secretary
Govt. of Khyber Pakhtunkhwa
(Respondent No. 1)


Secretary to Govt.
of Khyber Pakhtunkhwa
Irrigation Department Peshawar.
(Respondent No. 2)


Chief Engineer (South)
Irrigation Department Peshawar
(Respondent No. 3)

Registered AD

OFFICE OF THE CHIEF ENGINEER,
IRRIGATION DEPARTMENT KHYBER,
FAKHTUNKHWA PESHAWAR.

17
18
15
20

NO. 8016-17 / IB/N/1902-PF.

Dated Peshawar the 22/11/2010.

To

Mr. Istikhar Ahmad
S/O Habib Sher, Vill;
Ismail Kot, Teh. Pandiali,
P.O. Ekkaghund Mohmand Agency.

Subject:- NOTICE FOR RESUMING DUTY AFTER EXPIRY OF LEAVE.

I am directed to state that you were granted CG, 365 days Extra Ordinary leave w.e.f. 16-08-2009 to 15-08-2010 but on expiry of leave you have not reported arrival for duty without any authority which is an act of misconduct on your part.

You are hereby directed to attend the office within 15 days and explain the causes of your absence failing which disciplinary action will be taken against you under Removal from Service Special Power Ordinance 2000.

C.C.

7/2 ADMINISTRATIVE OFFICER,
PH: NO. 9212118.

Superintending Engineer Central Irrigation Circle Peshawar w/r to his letter No. 1003/3-E, dated 01-11-2010, for information.

7/2
Chh
11/11
ADMINISTRATIVE OFFICER.

REGISTERED.

OFFICE OF THE CHIEF ENGINEER,
IRRIGATION DEPARTMENT KHYBER,
PESHAWAR PESHAWAR.

20
19

NO. 10552-53/IB/A/1902-PF,

Dated Peshawar the 15/12/2010.

To

Mr. Iftikhar Ahmad,
S/O Habib Sher, Vill: Ismail Xct,
Tehsil Sandiali, P.O. Mikkaghund,
Muhammad Agency.

Subject:- NOTICE FOR RESUMING DUTY AFTER EXPIRY OF LEAVE.

Reference:- This office letter No. 801-17/IB/A/1902-PF,
dated 22-11-2010.

cc. 19

You were directed to resume duty and explain the causes of your absence within 15 days of the receipt of this office letter under reference but no response has been received from your end.

You are hereby finally asked to resume duty forthwith and also intimate cogent reason for your wellfared absence otherwise action will be initiated against you under removal from Service special Power ordinance 2000.

ADMINISTRATIVE OFFICER,
PH. NO. 9212118.

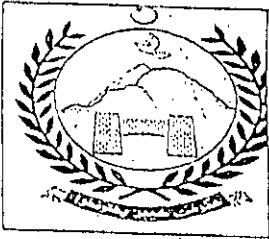
C.C.

XER, Tubewells Irrigation Division Peshawar
He is requested to intimate response of the official.

ADMINISTRATIVE OFFICER.

C-112

13/12



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SOR-VI/E&AD/2-6
Dated Peshawar, the, 17th September, 2011

To

1. The Additional Chief Secretary, Planning & Development Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Additional Chief Secretary (FATA), FATA Secretariat, Peshawar.
3. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa.
5. All the Divisional Commissioners in Khyber Pakhtunkhwa.
6. All Heads of the Attached Departments in Khyber Pakhtunkhwa.
7. All the District Coordination Officers in Khyber Pakhtunkhwa and Political Agents in FATA.

Subject: KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 2011.

Dear Sir,

I am directed to invite your attention to the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 published in the Extraordinary issue of the Government Gazette of 16th September, 2011 (copy enclosed) and to state that the procedure to be adopted for proceeding against persons in Government Service under the new rules has been substantially changed. These rules also apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

2. Salient features of the new rules are as under:-

- (i) Doing away with Authorized Officer.
- (ii) Both competent and appellate authorities clearly defined.
- (iii) Providing express provision for personal hearing;
- (iv) Specifying duties of Departmental representative;
- (v) Recording statement of parties in the presence of accused and vice versa,
- (vi) Specific period for imposing penalty of withholding promotion or increments.
- (vii) Removal from service in cases of willful absence.

9. Procedure in case of wilful absence.---Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. Procedure to be followed by competent authority where inquiry is necessary.--- (1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted; and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary inquiry.

11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry *ex-parte*.

1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No.416 /2012

Iftikhar Ahmad, Ex- Sub Engineer T / Well Irrigation Sub-Division Peshawar.

(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Peshawar and others.

(Respondents)

Replication on behalf of the appellant

Preliminary Objections:

1. Contents incorrect and false, the appeal in hand has been filed well within the prescribed period of limitation.
2. Contents misconceived, the appellant has illegally been awarded the penalty of removal from service, he being a civil servant has got necessary locus standi to approach this Honourable Tribunal.
3. Contents misconceived and incorrect, the appellant has come to this Tribunal with clean hands.
4. Contents misconceived and incorrect, the appeal being filed well in accordance with the prescribed procedure, therefore maintainable in its present form.
5. Contents incorrect and false all parties necessary for the disposal of this appeal are arrayed as parties.

Facts of the case:

1. Contents need no reply, however, contents of para 1 of the appeal are correct.
2. Contents need no reply, however, contents of para 2 of the appeal are correct.
3. Contents need no reply, however, contents of para 3 of the appeal are correct.
4. Contents of Para 4 of the appeal are correct. The reply submitted to the Para is incorrect and false, moreover the absence notices were never served upon the appellant at his home address.

5. Contents of Para 5 of the appeal are correct. The reply submitted to the Para incorrect and false.
6. Contents of Para 6 of the appeal are correct. The reply submitted to the Para incorrect and false.
7. Contents of Para 7 of the appeal are correct. The reply submitted to the Para incorrect and false.
8. Contents of Para 8 of the appeal are correct. The reply submitted to the Para incorrect and false.
9. Contents of Para 9 of the appeal are correct. The reply submitted to the Para incorrect and false.
10. Contents need no reply, however contents of para 10 of the appeal are true and correct.
11. Contents of Para 11 of the appeal are correct. The reply submitted to the Para incorrect and false.

Grounds of Appeal:

Contents A to L taken in the Memo of Appeal are legal will be substantiated at the hearing of this appeal.

It is, therefore, prayed that on acceptance of this replication the service appeal of the appellant be accepted as prayed for.

Ijaz Anwar
Appellant

Through

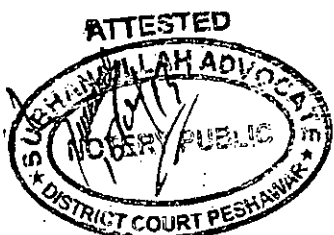
Ijaz Anwar

IJAZ ANWAR
Advocate Peshawar

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the above replication as well as appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Ijaz Anwar
Deponent



1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No.416 /2012

Iftikhar Ahmad, Ex- Sub Engineer T / Well Irrigation Sub-Division Peshawar.

(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Peshawar and others.

(Respondents)

Replication on behalf of the appellant

Preliminary Objections:

1. Contents incorrect and false, the appeal in hand has been filed well with in the prescribed period of limitation.
2. Contents misconceived, the appellant has illegally been awarded the penalty of removal from service, he being a civil servant has got necessary locus standi to approach this Honourable Tribunal.
3. Contents misconceived and incorrect, the appellant has come to this Tribunal with clean hands.
4. Contents misconceived and incorrect, the appeal being filed well in accordance with the prescribed procedure, therefore maintainable in its present form.
5. Contents incorrect and false all parties necessary for the disposal of this appeal are arrayed as parties.

Facts of the case:

1. Contents need no reply, however, contents of para 1 of the appeal are correct.
2. Contents need no reply, however, contents of para 2 of the appeal are correct.
3. Contents need no reply, however, contents of para 3 of the appeal are correct.
4. Contents of Para 4 of the appeal are correct. The reply submitted to the Para is incorrect and false, moreover the absence notices were never served upon the appellant at his home address.

5. Contents of Para 5 of the appeal are correct. The reply submitted to the Para incorrect and false.
6. Contents of Para 6 of the appeal are correct. The reply submitted to the Para incorrect and false.
7. Contents of Para 7 of the appeal are correct. The reply submitted to the Para incorrect and false.
8. Contents of Para 8 of the appeal are correct. The reply submitted to the Para incorrect and false.
9. Contents of Para 9 of the appeal are correct. The reply submitted to the Para incorrect and false.
10. Contents need no reply, however contents of para 10 of the appeal are true and correct.
11. Contents of Para 11 of the appeal are correct. The reply submitted to the Para incorrect and false.

Grounds of Appeal:

Contents A to L taken in the Memo of Appeal are legal will be substantiated at the hearing of this appeal.

It is, therefore, prayed that on acceptance of this replication the service appeal of the appellant be accepted as prayed for.

Through Appellant

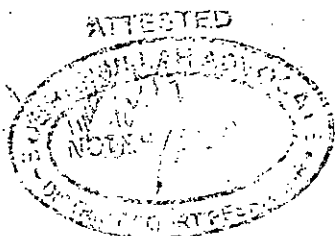


IJAZ ANWAR
Advocate Peshawar

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the above replication as well as appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent



POWER OF ATTORNEY

In the Court of

ICDC Sui Tribunal Pesh

Iftikhar Ahmad

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Gut

} Defendant
} Respondent
} Accused

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

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

**YASIR SALEEM ADVOCATE, HIGH COURT
JAWAD UR REHMAN ADVOCATE**

_____ my true and lawful attorney, for me in my same and on my behalf to appear at _____ 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 _____

Jawad ur Rehman
JAWAD-UR-REHMAN

Yasir Saleem
YASIR-SALEEM

**GOVERNMENT OF
THE NORTH-WEST FRONTIER PROVINCE,
LAW DEPARTMENT**

NOTIFICATION

Dated 15th August 2000

No. Legis:1(4)/2000/4457.. The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:.

**THE NORTH-WEST FRONTIER PROVINCE
REMOVAL FROM SERVICE (SPECIAL POWERS)
ORDINANCE, 2000
N.W.F.P ORDINANCE NO. V OF 2000**

**AN
ORDINANCE**

to provide for dismissal, removal, compulsory retirement from service and reduction to lower post or pay scale of certain persons from Government service or corporation service.

WHEREAS, in view of prevailing circumstances, it is expedient and necessary in the public interest, and for furtherance of good governance, to provide for measures, inter-alia, relating to dismissal, removal, etc., of certain persons from Government service or corporation service as hereinafter appearing;

AND WHEREAS, it is necessary to provide for speedy disposal of such cases and for matters connected therewith or ancillary thereto;

AND WHEREAS, under the provisions contained in Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, the Governor of a province, on the instructions of the Chief Executive of Pakistan, may issue and promulgate an Ordinance if the circumstances exist which render it necessary to take immediate action;

AND WHEREAS the Governor is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers aforesaid and all other powers enabling him in that behalf, the Governor of the North-West Frontier Province, on the instructions of the Chief Executive of Pakistan, is pleased to make and promulgate the following Ordinance:

1. Short title, extent, commencement and application.---(1) This Ordinance may be called the North-West Frontier Province Removal from Service (Special Powers) Ordinance, 2000.

- (2) It extends to the whole of the North-West Frontier Province.
- (3) It shall come in force at once.
- (4) It shall apply to persons in Government service and/or corporation service.

2. Definitions.---In this Ordinance, unless there is anything repugnant in the subject or context:

- ¹ (a) “competent authority” means the Chief Minister and where, in relation to any person or class of persons, the Chief Minister authorizes any officer or authority, not being inferior in rank to the appointing authority prescribed for the post held by the person against whom action is proposed to be taken, to exercise the powers of competent authority under this Ordinance, that officer or authority and, in relation to an employee of a Court or tribunal functioning under Government, the appointing authority, or the Chairman or Presiding Officer of the Court or the Tribunal:

² Provided that in relation to the employees of Universities incorporated by law in the North-West Frontier Province, in respect of which the Governor is the Chancellor, the North-West Frontier Province Board of Technical Education and the Boards of Intermediate and Secondary Education in the North-West Frontier Province, the competent authority shall mean the Governor;

- (b) “Government” means the Government of the North-West Frontier Province;
- (c) “misconduct” includes conduct prejudicial to good order or service discipline or conduct unbecoming of an officer or gentleman or involvement or participation for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons such as may cause embarrassment in the performance of official duties or functions;
- (d) “persons in corporation service” mean every person in the employment of a corporation, corporate body, authority, statutory body or other organization or institutions set up, established, owned, managed or controlled by Government, by or under any law for the time being in force, or a body or organization in which Government has a controlling share or interest and includes the Chairman and the Managing Director, and the holder of any other office therein; and
- (e) “persons in Government service” include every person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include:
- (i) a person who is on deputation to the Province from the Federation or any other Province or other Authority;

¹ Section 2(a) substituted and proviso added. by N.-W.F.P. Act No. II of 2004.

² Proviso added by NWFP Act No. II of 2004.

- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);

but includes any employee serving in any court or tribunal set up or established by Government, except a Judge of the High Court or a court subordinate to the High Court and any employee thereof; and

- (f) "Province" means the North-West Frontier Province.

33. Dismissal, removal and compulsory retirement, etc. of certain persons in Government or corporation service, etc.—(1) Where, in the opinion of the competent authority, a person in Government or corporation service is-

- (a) inefficient, or has ceased to be efficient for any reason, or is guilty of habitually absenting himself from duty without prior approval of leave, or
- (b) guilty of misconduct; or
- (c) corrupt, or may reasonably be considered as corrupt, because,-
 - (i) he, or any of his dependants or any other person, through him or on his behalf, is in possession of pecuniary sources, or of property, for which he cannot reasonably account for, and which are disproportionate to his known sources of income; or
 - (ii) he has assumed a style of living beyond his known sources of income; or
 - (iii) he has a persistent reputation of being corrupt; or
 - (iv) he has entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily; or
- (d) engaged, or is reasonably believed to be engaged, in subversive activities and his retention in service is prejudicial to national security or he is guilty of disclosure of official secrets to any unauthorized persons; or
- (e) found to have been appointed or promoted on extraneous considerations in violation of law and the relevant rules,

³ Section 3 substituted by NWFP Ordinance V of 2001.

⁴the competent authority, after inquiry by an Inquiry Officer or the Inquiry Committee appointed under section 5, may notwithstanding anything contained in any law, or the terms and condition of service of such person, by order in writing, dismiss or remove such person from service, compulsorily retire him from service or reduce him to lower post or pay scale, or recover from pay, pension or any other amount payable to him, the whole or a part of any pecuniary loss caused to the organization in which he was employed or impose one or more minor penalties as prescribed in the North-West Frontier Province Government Servants (Efficiency and Discipline) Rules, 1973, made under section 26 of the North-West Frontier Province Civil servant Act 1973 (N.W.F.P Act No. XVIII of 1973.)

(2) Before passing an order under sub-section (1), the competent authority shall,-

- (a) by order in writing, inform the accused of the action proposed to be taken with regard to him and the grounds of the action; and
- (b) give him a reasonable opportunity of showing cause against that action within seven days or within such extended period as the competent authority may determine:

Provided that no such opportunity shall be given where-

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity; or
- (ii) the accused is dismissed under clause ⁵[(a) of sub-section (2) of section 3A] or where the competent authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to give the accused an opportunity of showing cause.

(3) The dismissal or removal or premature retirement from service or reduction to lower post or pay scale of a person under sub-section (1) shall not absolve such person from liability to any punishment to which he may be liable for an offence committed by him under any law, while in service.

3A. Procedure in case of conviction by a court of law.---(1) Where a person in Government service or in corporation service on conviction by a court of law is sentenced to imprisonment or fine, the competent authority shall examine the facts and the grounds on which the order convicting such person was passed by a court of law.

(2) Where on examination the competent authority finds that order of imprisonment or fine is based on-

- (a) established charges of corruption or moral turpitude, it shall pass order of dismissal from service of the delinquent person in Government service or in corporation service

⁴ Substituted by NWFP Ordinance No VIII of 2002

⁵(a) of sub-section (2) of Section 3A added by Act No.XII of 2003.

⁶ Section 3A added by N.-W.F.P. Ord. No. XII of 2003.

which shall be effective from the date of his conviction by a court of law; or

- (b) charges other than corruption or moral turpitude it may, in the light of the facts and circumstances of the case, decide as to whether it is a fit case for taking departmental action under this Ordinance, and if it so decides it may, subject to the provisions of sub-section (2) of section 3, impose any penalty provided by this Ordinance as it may deem fit.

4. Suspension.--- A person against whom action is proposed to be taken under sub-section (1) of section 3 may be placed under suspension with immediate effect if, in the opinion of the competent authority, suspension is necessary or expedient:

Provided that the competent authority may, in an appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave, as may be admissible to him, from such date as may be specified by the competent authority.

5. Power to appoint an Inquiry Officer or Inquiry Committee.---(1) Subject to the provisions of sub-section (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry Officer or, as the case may be, the Inquiry Committee, shall-

- (a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;
- (b) require the accused within seven days from the day the charge is communicated to him to put in a written defence;
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him; and
- (d) hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the Inquiry Officer or, as the case may be, the Inquiry Committee, is satisfied that the accused is hampering, or attempting to hamper, the progress of the Inquiry, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he or it deems proper in the interest of justice.

(3) The Inquiry Officer or, as the case may be, the inquiry Committee, shall submit his or its findings and recommendations to the competent authority within twenty-five days of the initiation of inquiry.

(4) The Competent authority may dispense with the inquiry under sub-section (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry.

(5) Where a person who has entered into plea bargaining under any law for the time being in force, and has returned the assets or gains acquired through corruption or corrupt practices voluntarily, the inquiry shall not be ordered:

Provided that show cause notice shall be issued on the basis of such plea bargaining to such person informing of the action proposed to be taken against him and the grounds of such action requiring him to submit reply within fifteen days of the receipt of the notice. On receipt of the reply, the competent authority may pass such orders as it may deem fit.

6. Powers of the [Inquiry Officer or] Inquiry Committee.---The Inquiry Officer or, as the case may be, the Inquiry Committee shall have powers-

- (a) to summon and enforce attendance of any person and examine him on oath;
- (b) to require the discovery and production of any document;
- (c) to receive evidence on affidavits; and
- (d) to record evidence.

7. Procedure to be followed by the Inquiry Officer or Inquiry Committee.---The Inquiry Officer or, as the case may be, the Inquiry Committee shall, subject to any rules made under this Ordinance, have power to regulate its own procedure including the fixing of place and time of its sitting and deciding whether to sit in public or in private, and, in the case of a committee constituted for a person in corporate service, to act notwithstanding the temporary absence of any of its members.

8. Order to be passed upon a finding.---Every finding recorded by an Inquiry officer or, as the case may be the Inquiry Committee under section 5 shall, alongwith the recommendation provided for in that section, be submitted to the competent authority and the competent authority may pass such orders thereon as it may deem proper in accordance with the provisions of this Ordinance.

9. Representation.---(1) A person on whom a penalty is imposed under section 3, may, within fifteen days from the date of communication of the order, prefer a representation to-

- (a) the Chief Minister or an Officer or authority designated by him, if the order has been passed by an officer or authority authorized by the Chief Minister;
- (b) the Governor or an officer or authority designated by him in any other case; provided that where the order has been made by the Governor, such person may, within the aforesaid period, submit a ⁹[review petition] to the Governor; and

⁸ Section 9 substituted by N.-W.F.P. Act No. II of 2004,

⁹ The word "representation" substituted by the word [review petition] vide NWFP Removal from Service (Special Powers) (Amendment) Act 2005 (NWFP Act No III of 2005) dt 29-1-2005

- (c) the Governor, where an order as competent authority has been passed by the Chief Minister.

(2) The Governor, the Chief Minister or an officer or authority, as may be designated for the purpose by the Governor or the Chief Minister, as the case may be, may, on consideration of the representation or, as the case may be, the ¹⁰[review petition] and any other relevant material, confirm, set aside, vary or modify the order in respect of which such representation or ¹¹[review petition] is made.

10. Appeals.--- Notwithstanding anything contained in any other law for the time being in force, any person aggrieved by any final order under section 9 may, within thirty days of the order, prefer an appeal to the Service Tribunals established under the North-West Frontier Province Service Tribunals Act, 1974 (N.-W.F.P. Act No. I of 1974):

¹²Provided that where a representation ¹³[*****] has been preferred under section 9, but no decision has been received by, or communicated to, the applicant or, as the case may be, the petitioner, within a period of sixty days of its submission to the prescribed authority, he may prefer an appeal to the Service Tribunal, established under section 3 of the North-West Frontier Province Service Tribunals Act, 1974 (N.-W.F.P. Act No. I of 1974), within thirty days of the expiry of the aforesaid period.

11. Ordinance to override other laws.---The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in the North-West Frontier Province Civil Servant Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), and the rules made thereunder, and any other laws for the time being in force.

12. Proceeding under this Ordinance.---All proceedings initiated on the commencement of this Ordinance in respect of matters and persons in service provided for in this Ordinance shall be governed by the provisions of this Ordinance and rules made thereunder:

¹⁴Provided that the Provincial Government may, by notification in the official gazette, exempt any class or classes of employees of a corporation, a corporate body, authority, statutory body or other organization or institution set up, established, owned, managed or controlled by it, or a body or organization in which it has a controlling share or interest, from the provisions of this Ordinance and such class or classes of employees shall, notwithstanding anything contained in this Ordinance, be proceeded against and dealt with under the laws and rules applicable to such employees before the commencement of this Ordinance.

13. Pending proceedings to continue.---For the removal of doubts, it is hereby provided that all proceedings pending immediately before the commencement of this Ordinance against any person, whether in Government service or service of a corporation, under the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), and rules made thereunder, or any other law or rules, shall continue under the said laws and rules in the manner provided thereunder.

¹⁰ The word "representation" substituted by the word [review petition] vide NWFP Act No III of 2005

¹¹ The word "presentation" substituted by the word [review petition] vide NWFP Act No III of 2005

¹² Proviso added by NWFP ordinance No XXV of 2002

¹³ The word "or review petition" omitted vide NWFP ordinance No XLV of 2002

¹⁴ Proviso to section 12 added by ordinance No. XXXIII of 2001

14. Pensionary benefits, etc.---Notwithstanding anything contained in this Ordinance, the payment of pension or other benefits to a person retired or reduced to lower post or pay scale under this Ordinance shall, if admissible, be regulated in accordance with the law for the time being in force relating thereto.

¹⁵**14 A. Indemnity.**--- No suit, prosecution or other legal proceedings shall lie against the competent authority or an officer or authority authorized by it for anything which is in good faith done or intended to be done under this Ordinance or the rules, instructions or directions made or issued thereunder.

14 B. Jurisdiction barred.--- Save as otherwise provided, no order made or proceedings taken under this Ordinance, or the rules made thereunder by the competent authority or an officer or authority authorised by it shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made or proceedings taken in pursuance of any power conferred by, or under, this Ordinance, or the rules made thereunder.

15. Power to make rules.---Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

16. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Governor may make such Order, not inconsistent with the provisions of this Ordinance, as may appear to him to be necessary for the purpose of removing the difficulty.

Peshawar, Dated the
11th August 2000.

LT.Gen(RTD) MUHAMMAD SHAFIQ,
Governor of the North-west Frontier Province.

SALIM KHAN,
Secretary to Government of
North-West Frontier Province, Law Department.

¹⁵ Section 14A & 14B added by NWFP ordinance No VIII of 2002