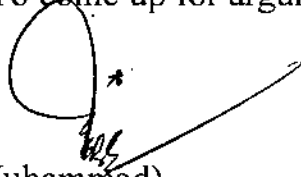


20.12.2022

Learned counsel for the appellant present. Mr. Ashfaq, Assistant alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 20.01.2023 before D.B.

SCANNED  
KPST  
Peshawar



(Mian Muhammad)  
Member (E)



(Salah-ud-Din)  
Member (J)

20.01.2023

Appellant present in person. Muhammad Adeel Butt learned Additional Advocate General for respondents present.

SCANNED  
KPST  
Peshawar

Former requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 15.03.2023 before D.B.



(Fareeha Paul)  
Member (E)



(Rozina Rehman)  
Member (J)

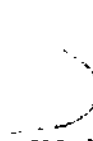
30<sup>th</sup> May, 2022

Learned counsel for the appellant present. Mr. Asif Masood, DDA for the respondents present.

Learned counsel for the appellant seeks adjournment in order to properly assist the Court. Adjourned. To come up for arguments on 02.08.2022 before the D.B.



(Mian Muhammad)  
Member(E)



(Kalim Arshad Khan)  
Chairman

2-8-2022

is Proper DB not available the case  
adjourned to 31-10-2022

72  
Reader

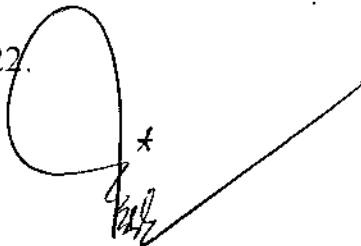
31.10.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments.

Adjourned. To come up for arguments before the D.B. on

20.12.2022.



(Mian Muhammad)  
Member (E)



(Salah-ud-Din)  
Member (J)

SCANNED  
POST

22.09.2021

Appellant present in person.

Muhammad Rasheed learned D.D.A for respondents present.

Former made a request for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 10.12.2021 before D.B.



(Rozina Rehman)  
Member (J)

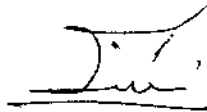


Chairman

10.12.2021

Counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the case. Request is accorded. Case to come up for arguments on 07.03.2022 before the D.B.



(Salah-ud-Din)  
Member(J)



Chairman

7-3-22

*Due to retirement of the Honble  
Chairman the case is adjourned to 30-5-22*

*Reddy*

10.03.2021

Appellant is present in person.

Vide order sheet dated 18.01.2021 this Tribunal admitted the appeal of appellant for regular hearing and it was ordered to issue notices to respondents for written reply/comments and next date of hearing was given to the appellant by the Reader as 10.03.2021 but erroneously the next date of hearing was recorded on the order sheet as 06.04.2021 and notices to respondents have also been issued for 06.04.2021. In order to rectify the anomaly, the present case is therefore adjourned to the date already <sup>fixed for</sup> 06.04.2021.

  
(MIAN MUHAMMAD)  
MEMBER (E)

06.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.07.2021 for the same as before.

  
READER

14.07.2021

Appellant with counsel and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Respondents have furnished reply/comments. The appeal is entrusted to D.B for arguments on 22.09.2021.

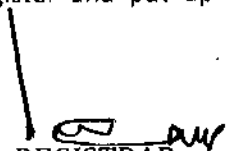


  
Chairman

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 15578 /2020

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge   |
|-------|---------------------------|--|
| 1     | 2                         | 3  |
| 1-    | 03/12/2020                | <p>The appeal of Mr. Sadaqat Ali presented today by Roeda Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><br/>REGISTRAR</p>  |
| 2-    |                           | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18/01/2021</u></p> <p style="text-align: right;"><br/>CHAIRMAN</p>   |
|       | 18.01.2021                | <p>Appellant present through counsel. Preliminary arguments heard. File perused.</p> <p>Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 06.04.2021 before S.B.</p> <p style="text-align: right;"><br/>(Rozina Rehman)<br/>Member (J)</p> |

Appellant Deposited  
Security & Process Fee  
18/1/21

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. 15578 /2020

Sadaqat Ali

***VERSUS***

Registrar Peshawar High Court Peshawar & others

**INDEX**

| S#  | Description of Documents        | Annexure | Pages    |
|-----|---------------------------------|----------|----------|
| 1.  | Grounds of Petition.            |          | 1-5      |
| 2.  | Affidavit.                      |          | 6        |
| 3.  | Addresses of parties            |          | 7        |
| 4.  | Condonation of delay            |          | 8-9      |
| 5.  | Copy of Order                   | "A"      | 10       |
| 6.  | Copy of writ petition order     | "B"      | 11 TO 31 |
| 7.  | Copy of inquiry report          | "C"      | 32 TO 36 |
| 8.  | Copy of 2 <sup>nd</sup> inquiry | "D"      | 37 TO 45 |
| 9.  | Copy of impugned order          | "E"      | 46 TO 48 |
| 10. | Copy of departmental appeal     | "F"      | 49 TO 50 |
| 11. | Wakalatnama                     |          |          |

*Sadaqat Ali*  
APPELLANT

Through

*Roeeda Khan*  
**Roeeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 03/12/2020

(1)

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

Sadaqat Ali Naib Qasid District & Session Court  
Peshawar.

Appellant

***VERSUS***

1. The Registrar Peshawar High Court Peshawar.
2. The Hon'ble District & Session Judge Peshawar.
3. The Hon'ble Senior Civil Judge Admin Peshawar.

Respondents

**APPEAL U/S-4 OF THE KHYBER**  
**PAKHTUNKHWA SERVICES TRIBUNAL ACT**  
**1974 AGAINST THE ORDER DATED 19/06/2020**  
**COMMUNICATED OF THE APPELLANT ON**  
**20.07.2020 WHEREBY THE APPELLANT HAS**  
**BEEN AWARDED MINOR PUNISHMENT OF**  
**CENSURED AGAINST WHICH THE**  
**APPELLANT FILED DEPARTMENTAL APPEAL**  
**ON 05.08.2020 WHICH HAS NOT BEEN**  
**DECIDED WITHIN THE STATUTORY PERIOD**  
**OF 90 DAYS ALONG WITH ALL BACK**  
**BENEFITS WITH EFFECT FROM 05.06.2011.**

**Prayer:-**

**ON ACCEPTANCE OF THIS APPEAL**  
**THE IMPUGNED ORDERS DATED**  
**19/06/2020 MAY KINDLY BE SET ASIDE**

(2)

AND THE APPELLANT MAY KINDLY BE  
ALLOWED ALL BACK BENEFITS OF  
SERVICE WITH EFFECT FROM  
06.05.2011. ANY OTHER REMEDY  
WHICH THIS AUGUST TRIBUNAL  
DEEMS FIT THAT MAY ALSO BE  
ONWARD TRIBUNAL DEEMS FIT THAT  
MAY ALSO BE GRANTED IN FAVOUR  
APPELLANT..

Respectfully Sheweth,

1. That the Appellant was initially appointed as Naib Qasid on 10<sup>th</sup> July, 1989 in the District Courts Peshawar and was later on transferred to the Hon'ble Peshawar High Court, Peshawar on 12<sup>th</sup> April 1996.
2. That after appointment the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That on 06.05.2011 the compulsory retirement order has been passed against the appellant by the respondent department. (Copy of order is attached as **annexure "A"**).
4. That against the compulsory retirement order the appellant filed writ petition No.



3472-P/2012 before the Hon'ble Peshawar High Court Peshawar which has been accepted on 26.09.2018. (Copy of writ petition order is attached as annexure "B").

5. That in compliance with the order by Hon'ble Peshawar High Court, Peshawar in the above writ petitioner the competent authority was passed to order for denovo inquiry against the appellant.

6. That on compliance of the above order on 06.11.2019 the inquiry officer exonerated the appellant from the charge leveled against him. (Copy of inquiry report is attached as annexure "C").

7. That on 25.10.2020 the competent authority once again orders for inquiry against the appellant to inquire further into the matter and recommended for minor punishment of censure against the appellant and properly submitted his report on 06.06.2020. (Copy of 2<sup>nd</sup> inquiry is attached as Annexure "D").

8. That on 19.06.2020 the impugned order has been passed against the appellant whereby the competent authority has been imposed minor penalty of censure against the appellant and the appellant came to know

4

regarding the said order on 20.07.2020 and received attested copy of the said order on 20.07.2020. (Copy of impugned order is attached as annexure "E").

9. That the appellant submitted departmental appeal on 05.08.2020 to respondent department which has not been decided within the statutory period of 90 days (Copy of departmental appeal is attached as annexure "F").

10. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

**GROUNDS:-**

- A. That the impugned order 19/06/2020 is void and abinitio order because it has been passed without fulfilling codal formalities.
- B. That the charges against the appellant are false, fabricated and baseless as is evident from the inquiry report.
- C. That despite the fact, that inquiry officer exonerated the appellant from all the charges as leveled against the appellant in the statement of allegation and charge sheet; however the impugned order was passed, which is unjust, unfair and hence not sustainable in the eye of law.

5

D. That now show cause notice has been issued to the appellant.

E. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

*It is therefore, most humbly prayed that on acceptance of this appeal the impugned orders dated 19/06/2020 may kindly be set aside and the appellant may kindly be allowed all back benefits of service with effect from 06.05.2011. Any other remedy which this august tribunal deems fit that may also be onward tribunal deems fit that may also be granted in favour appellant.*

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

*delivered*  
APPELLANT

Through

*RK*  
**Roeeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 03/12/2020

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.

*RK*  
Advocate.

6

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

Sadaqat Ali

***VERSUS***

Registrar Peshawar High Court Peshawar & others

**AFFIDAVIT**

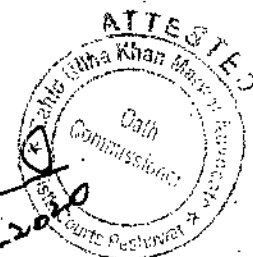
I, Sadaqat Ali Naib Qasid District & Session Court Peshawar, do hereby solemnly affirm and declare that all the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.

*Sadaqat Ali*

DEPONENT

Identified by:

*[Signature]*  
Roeda Khan  
Advocate High Court  
Peshawar.



(7)

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

Sadaqat Ali

***VERSUS***

Registrar Peshawar High Court Peshawar & others

**ADDRESSES OF PARTIES**

***PETITIONER.***


Sadaqat Ali Naib Qasid District & Session Court  
Peshawar.

**ADDRESSES OF RESPONDENTS**

1. The Registrar Peshawar High Court Peshawar.
2. The Hon'ble District & Session Judge Peshawar.
3. The Hon'ble Senior Civil Judge Admin Peshawar

  
APPELLANT

Through

  
**Roeeza Khan**  
Advocate, High Court  
Peshawar.

Dated: 03/12/2020

8

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2020

Sadaqat Ali

***VERSUS***

Registrar Peshawar High Court Peshawar & others

**APPLICATION FOR CONDONATION OF DELAY (if any)**

***Respectfully Sheweth,***

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That on 19.06.2020 the impugned order has been passed against the appellant whereby the competent authority has been imposed minor penalty of censure against the appellant and the appellant came to know regarding the said order on 20.07.2020 and received attested copy of the said order on 20.07.2020.

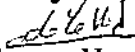
***Grounds:***

- A. That the impugned orders are void order and no limitation run against the void orders. It has been passed without the fulfilling the codal formalities.

9


- b. That there are many judgment of the superior court that limitation has not become a huddle in way of justice.
- c. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

  
*Appellant*

Through

Date : 03.12.2020

  
*Roeeeda Khan*  
Advocate, High Court  
Peshawar.

(A) (10)  
PESHAWAR HIGH COURT, PESHAWAR

ORDER

Dated Peshawar the 06<sup>th</sup> May, 2011

WHEREAS on the complaint of Mr. Muhammad Saeed Khan, Advocate Shangla against Mr. Sadaqat Ali, Naib Qasid of this Court, Mr. Khurshid Iqbal, Additional Member Inspection Team-I was appointed as Authorized Officer to proceed against the Accused Official under the NWFP Government Servants (Efficiency & Discipline) Rules, 1973;

AND WHEREAS after complying with the entire procedure under the rules ibid, the Authorized Officer recommended the imposition of the major penalty of removal from service of the Accused Official;

NOW, THEREFORE, keeping in view the service of the Accused Official in this department for more than twenty one years, it is ordered that the Accused Official stands compulsorily retired from service within the meanings of Rule 4(1)(b)(ii) of the NWFP Government Servants (Efficiency and Discipline) Rules, 1973, with immediate effect.

REGISTRAR

Endst. No. 5701-68 /Admn:

Dated Pesh the 10 /05 /2011

Copy forwarded to:-

1. The Member Inspection Team, Peshawar High Court, Peshawar.
2. The Addl. MIT-I/Authorized Officer, Peshawar High Court, Peshawar.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Registrar (Accounts), Peshawar High Court, Peshawar.
5. The Incharge Pensioners Cell, Peshawar High Court, Peshawar.
6. The Private Secretary to HC-I, Peshawar High Court, Peshawar.
7. The official concerned by name.
8. Personal file of the concerned official.

REGISTRAR



Am (B) (11)

IN THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION No. 3472 P/2012



Sadaqat Ali,  
Ex-Naib Qasid  
Peshawar High Court,  
Peshawar.....Petitioner.

Versus

The Registrar,  
Peshawar High Court, Peshawar.....Respondent.

**WRIT PETITION UNDER ARTICLE, 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC  
OF PAKISTAN, 1973.**

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That petitioner was initially appointed as Naib Qasid on 10.07.1989 in the Court of District & Sessions Judge, Peshawar and was later on transferred to the Hon'ble Peshawar High Court, Peshawar on 12.04.1996.
2. That since his appointment, petitioner has served to the entire satisfaction of the high-ups and throughout his service career no complaint, disciplinary action etc. was ever filed/taken against him. Thus petitioner has had an unblemished service for a period of 22 years at his credit.

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07 DEC 2012

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EXAMINER  
Peshawar High Court

3. That on 09.02.2011 a Show Cause Notice alongwith Statement of allegations (*Annex:-A&B*) were served upon the petitioner wherein certain allegations were leveled against him on the basis of the alleged complaint filed by Mr. Saeed Khan Shangla Advocate on 02.02.2011 (*Annex:-C*) and alleged written statement of the petitioner dated 01.02.2011 (*Annex:-D*).
  
4. That petitioner submitted his reply (*Annex:-E*) to show cause notice ibid thereby denying the allegations as well as the alleged written statement. Subsequently, a final show cause notice (*Annex:-F*) was also served upon the petitioner on 07.03.2011 by the authorized officer on the basis of the same allegations to which a detailed reply (*Annex:-G*) was submitted thereby petitioner clarified his position and once again denied the allegations and requested for the recording the statements of Mr. Saeed Khan Shangla and Mr. Akbar Khan Advocates.
  
5. That on 06.05.2011 the competent authority vide impugned order (*Annex:-H*) imposed the major penalty of compulsory retirement on the petitioner within the meaning of Rule-4(1)(b)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973.
  
6. That petitioner, being aggrieved of impugned order ibid preferred a departmental appeal (*Annex:-I*) to the Hon'ble Chief Justice, Peshawar High Court, Peshawar but the same was dismissed and

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Peshawar High Court

communicated vide letter dated 20.09.2011 (*Annex:-J*). Thereafter petitioner filed a Review Petition (*Annex:-K*) but the same too was dismissed vide letter dated 17.10.2012 (*Annex:-L*), hence having no other adequate and efficacious remedy, petitioner files this constitutional petition against the impugned orders inter-alia on the following grounds:-

**Grounds:**

- A. That petitioner was not treated in accordance with law, rules and policy on subject and was dealt with in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully retired him compulsorily from service through the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That the charges against the petitioner are false, fabricated as is evident from the Affidavit (*Annex:-M*) submitted by Mr. Akbar Khan Advocate, Swat himself at whose instance the proceedings were initiated wherein he has in clear words stated that no such demand for bribe was made by the petitioner and all that took place was that he discussed the engagement of a criminal Counsel in his case in presence of Mr. Saeed Khan Shangla Advocate. In reply to the final show cause notice petitioner had requested that the statement of Mr. Akbar Khan Advocate may kindly be recorded in the interest of justice in presence of the petitioner so as to elucidate the matter but unfortunately the same was not recorded. Had his statement been recorded, the result would have

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EXAMINER  
Peshawar High Court

143

drastically been changed in favour of petitioner.

- C. That the petitioner has not made any statement as is incorporated in the statement allegedly recorded on 01.02.2011 as petitioner is illiterate and cannot read or write rather on an oral inquiry by the Secretary to the Hon'ble Chief Justice, petitioner disclosed that Mr. Akbar Khan Advocate discussed with the petitioner about the arrangement of a competent counsel for his defence in the presence of Mr. Saeed Khan Shangla Advocate and about the approximate fee of the counsel for his defence upon which it was Mr. Saeed Khan Shangla Advocate who told him that the fee of the counsel at High Court level would be high and nothing more. It was better for the petitioner to have resigned than to have given such an incriminating statement as alleged against him.
  
- D. That the written complaint allegedly filed by Mr. Saeed Khan Shangla Advocate has also been denied by him as is evident from his Affidavit submitted on 15.04.2011 (*Annex:-N*) wherein he has neither named the petitioner nor supported the allegations leveled against him. Moreover, the petitioner had also requested in his reply to the final show cause notice that the statement of the Mr. Saeed Khan Shangla Advocate be recorded in the interest of justice but that was also not done and even his duly sworn affidavit was not heeded to which has resulted in passing the impugned orders.
  
- E. That the story which has been gathered from the alleged statement and complaint is also vague, uncertain and non-appealing to mind because in the complaint the alleged deal was shown to be

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Deputy Registrar  
07 DEC 2012

ATTESTED  
EXAMINER  
Peshawar High Court

with regard to dismissal of appeal only whereas in the statement allegedly recorded by the petitioner the deal has been shown to be with regard to the shifting of the appeal from Peshawar to Swat Bench. If both the statement and complaint are compared the same will lead to the conclusion that the charges are false and concocted and only aimed at maligning the image and to damage the long unblemished service of the petitioner. Moreover, petitioner being a Class-IV employee how can he be expected to strike such a big deal and it is equally impossible for a senior lawyer like Mr. Akbar Khan Advocate to have believed a low-paid employee for the same. Moreover, Mr. Saeed Khan Shangla Advocate has never said in his complaint that in his presence the petitioner promised to Mr. Akbar Khan Advocate regarding the dismissal of his appeal in lieu of the alleged bribe because the complaint allegedly filed by him speaks altogether different story from what is mentioned in the alleged statement of the petitioner. Petitioner also even does not know by face or otherwise Mr. Hussain Ali Khan Advocate who has been mentioned in the statement allegedly made by the petitioner.

- F. That the allegations leveled against the petitioner postulated a regular and detailed inquiry wherein the oral and documentary evidence should have been recorded in presence of the petitioner providing full opportunity to the petitioner for his defence including cross examination because the controversy being factual in nature could only be resolved thereafter but unfortunately the same was not done which has resulted in serious miscarriage of justice thereby destroying the entire service career of petitioner. According to the

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EXAMINER  
Peshawar High Court

16

Judgments of the august Supreme Court of Pakistan, where the controversy is factual in nature then the holding of regular enquiry is the only solution for resolving the same and in absence of the same no major penalty can be imposed on the civil servant; reliance is placed upon "*Salman Farooqi ...Vs... Javed Bukhari, Authorized Officer and others*" (2007 SCMR 693) and "*Superintendent of Police Headquarters Rawalpindi and others ...Vs... Ijaz Haider*" (2000 SCMR 1868)

G. That it has now become a settled legal principle laid down by the august Supreme Court of Pakistan that no major penalty can be imposed without holding a regular inquiry; reliance is placed on "*Pakistan International Airline Corporation through Managing Director, PIAC, Head Office Karachi Airport, Karachi...Vs... Ms Shaista Naheed*" (2004 SCMR 316) and "*Rashid Mehmood...Vs... The Additional Inspector General of Police and two others*" (2002 SCMR 57).

H. That petitioner has put in about 22 years service during which period no allegation whatsoever has been leveled against the petitioner, he has consumed a prime youthful life in the service of the Hon'ble High Court and had he been involved in any such like activities there would have been complaints against him in the past and he would not have been leading such a poor and miserable life. Moreover, the impugned order will, not only adversely affect the life of the petitioner, but the entire family dependent upon the petitioner will suffer, thus keeping in view the above, the punishment so imposed is excessive and harsh.

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07 DEC 2012

ATTESTED

EXAMINER  
Peshawar High Court

(17)

7

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the impugned order dated 06.05.2011 and the order communicated vide letter dated 20.09.2011 as without lawful authority and hence of no legal effect and this august Court may further be pleased to set aside the same and reinstate petitioner from the date of the impugned order dated 06.05.2011 with all consequential back benefits.


Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

Through


Petitioner

  
Khaled Rehman

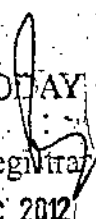
&

  
Sartaj Khan  
Advocates, Peshawar

Dated: 07 / 12/2012

  
**ATTESTED**

**EXAMINER**  
Peshawar High Court

  
**FILED TODAY**

Deputy Registrar

07 DEC 2012



18

CERTIFICATE

Certified on instruction that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.

  
Khaled Rahman  
Advocate, Peshawar.

List of Books

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Services Law.

Note

1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
2. Memo of addresses is also attached.

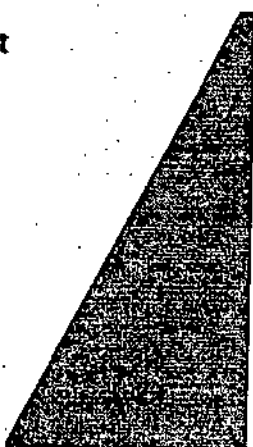
  
Khaled Rahman  
Advocate, Peshawar

**ATTESTED**  
  
**EXAMINER**  
Peshawar High Court

FILED TO AY

Deputy Registrar

07 DEC 2012





191

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
(Judicial Department)**

**W.P No. 3472-P/2012**

**Sadaqat Ali V/S Registrar Peshawar High  
Court and others**



**JUDGMENT**

Date of hearing: **26.09.2018**

**Petitioner:- (Sadaqat Ali) by Abdul Latif Afridi,  
Advocate.**

**Respondent:- (Registrar) by Mr. Khalid Rehman,  
Advocate.**

**MOHAMMAD IBRAHIM KHAN, J.-** Signing on

working for a living, the petitioner Sadaqat Ali was appointed and delegated as Naib Qasid in the establishment of District & Sessions Judge on 10.07.1989. He had rendered over and above 21 years service at his credit and was made compulsorily retired from service within the meaning of Rule 4(1)(b) of the then NWFP Government Servants (Efficiency and Discipline) Rules, 1973. What happened is that a complaint with allegations of

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

20

- 2 -

demanding a handsome amount of illegal gratification was made against the petitioner by Muhammad Saeed Khan Shangla Advocate vide application dated 02.01.2011 addressed to the Registrar Peshawar High Court, Peshawar. He was consequently called upon to record his statement before the Registrar Peshawar High Court Peshawar on 01.02.2011 whereby, he admitted his own statement that he had informed Mr. Akbar Khan Advocate through Muhammad Saeed Khan Shangla Advocate about the next date of his appeal before the Peshawar High Court. In his statement he has also admitted that he offered a bribe of Rs. 1 lac in response whereof he was to make arrangement that the opposite counsel in the appeal will delay the fixation of appeal in Peshawar High Court which was to result in transfer of his case to Darul Qaza Swat. The amount of Rs. 1 lac, according to him, was promised with Akbar Khan Advocate in presence of Mr. Saeed Khan Shangla Advocate which

ATTESTED

EXAMINER  
Peshawar High Court

211

amount was to be given to Hussain Ali Advocate (the opposite counsel in his appeal). The show cause notice alongwith the statement of allegations were handed over to Sadaqat Ali Ex-Naib Qasid Peshawar High Court. The petitioner as an accused/official came up with complete denial of the allegations in his written reply, whereafter final show cause notice was served upon him through letter No.3055/Admn dated 7.3.2011 for imposition of the penalties mentioned in Rule 4(1)(a) and (b) of Government Servants (Efficiency and Discipline) Rules, 1973, without conducting any inquiry, as it was deemed that no such proceedings were required in view of the statement of petitioner Sadaqat Ali before the Registrar Peshawar High Court. As a corollary, the impugned order dated Peshawar the 6<sup>th</sup> May, 2011 was passed and the petitioner thus stood compulsory retired from the service.

ATTESTED  
EXAMINER  
Peshawar High Court

2. Thereafter a departmental appeal was submitted by the petitioner before the Hon'ble Chief Justice Peshawar High Court which was dismissed. The petitioner was so informed through letter No.11289/Admn dated 20.09.2011. this caused the petitioner to file a review petition on 15.12.2011 which too met the same fate of dismissal being not maintainable under the rules. The petitioner was informed accordingly through letter No. 13576/Admn dated 17.10.2012..

3. Having no other efficacious remedy, the petitioner Sadaqat Ali has preferred this writ petition with perspective prayer:-

*"For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble court may graciously be pleased to declare the impugned order dated 06.05.2011 and the order communicated vide letter dated 20.09.2011 as without lawful authority and hence of no legal*

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

23

*effect and this august Court may further be pleased to set aside the same and reinstate petitioner from the date of the impugned order dated 06.05.2011 with all consequential back benefits.*

*Any other relief as deemed appropriate in the circumstances of the case not specifically asked for, may also be granted to petitioner."*

4. Having heard arguments of the learned counsel for the parties, record is also gone through with their valuable assistance.

5. As is fathered from record a dressed trial was never held against the petitioner in complaint dated 20.01.2011 of Muhammad Saeed Khan Shangla Advocate however, statement of the petitioner was recorded on 01.02.2011 before the Registrar Peshawar High Court Peshawar. Thereafter petitioner was served with the show cause notice alongwith statement of allegations and the charge had stated by

112  
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**ATTESTED**  
**EXAMINER**  
Peshawar High Court

24

was proved serving him, so final show cause notice

was issued as:

- i. That you have evasively denied the charge against you by simply stating in your reply that nothing has been recorded nor has been signed by you before the Registrar;
- ii. That in your statement recorded before the Registrar, you have admitted that you informed Mr. Akbar Khan Advocate for a second time to the effect that you had arranged with someone the dismissal of his appeal;
- iii. That you have admitted in your said reply dated 01.02.2011 that Mr. Akbar Khan offered you a bribe of Rs. 1 lac in response whereof you told him that you will make an arrangement with the opposite counsel in the appeal, who will try to delay the fixation of the appeal in the Peshawar High Court Peshawar, which will result in the transfer of the case to the Swat Bench of Peshawar High Court;

ATTESTED

EXAMINER  
Peshawar High Court

25

iv. That you have not provided any defence/reply to count # 3 of the charge, viz, that in the presence of Mr. Saeed Khan Advocate you promised with Mr. Akbar Khan Advocate that you will pay Rs. 1 lac to Mr. Hussain Ali Advocate (the opposite counsel in his appeal) and will arrange the dismissal of the appeal right in the Peshawar High Court, which has thus proved the charge; and

v. That the material available on the record establishes a line between you and the said Akbar Khan Advocate which though may be of personal nature, but for which you have unduly used your official position to the advantage of the said Mr. Akbar Khan.

112  
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The petitioner was however extended an opportunity for his defence and personal hearing if at all desired. The petitioner also submitted his reply to the final show cause notice dated 7.3.2011 whereafter, his wheel of fortune was decided in terms

**ATTESTED**

**EXAMINER**  
Peshawar High Court

26

of the order dated Peshawar the 6<sup>th</sup> May, 2011 in declaration of imposition of major penalty of removal from service he was favored with compulsory retirement in view of his 21 years length of service.

7. The significant question to answer appropriately is that whether a penalty less to talk of major penalty can be imposed on an employee, in this case the petitioner, who has in his credit more than 21 years service, merely for allegation and in view of his statement, which too does not seems to be of his own free will, pertaining to an alleged settlement with complainant for transfer of the petition from principal court to Darul-Qaza. There could be hardly such understanding as, ordinarily, an application for transfer of a case from Principal Court to Darul-Qaza could be made to the Hon'ble the Chief Justice.

Usually, writ petitions, appeals, revisions and even criminal cases are transferred from Principal Court to its respective Benches for all valid reasons. The mere

**ATTESTED**

**EXAMINER**  
Peshawar High Court



27

grievance of the petitioner is that neither the authorized officer ever appointed any officer subordinate to him for the purpose of holding an inquiry and nor he was accorded an opportunity of defence through properly constituted inquiry into the allegation making the charge sheet and the resulted end to his service through the major penalty of compulsory retirement.

8. Yes it is always the sweet prerogative of the Authorized Officer to hold or not to hold an inquiry in the matter if there are reasons to believe that the delinquent official has committed an act deliberately in one of the modes given in the grounds for penalties under the Government Servants (Efficiency and Discipline) Rules, 1973 but mere recording of statement of an official by the Registrar of this court which at times was practice to deal all such officials against whom there were complaints were proceeded without giving them any opportunity

1150

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

28

of being heard and were deprived of their services. In this case there is need of dire inquiry into the guilt of the petitioner and with this view guidance can be derived from the dictums contained in 2007 SCMR 693 Salman Farooqi vs Javed Bukhari, 2003 SCMR 207 Inspector General of Police vs Shafqat Mehmood, 2002 SCMR 57 Rashid Mehmood vs Additional Inspector General of Police, 2004 SCMR Pakistan International Airlines Corporation through Managing Director vs Shaista Naheed and some from the judgments of this Court in W.P No. 4159A/2016 Nasir Irshad vs Peshawar High Court through Registrar and Department Appeal No. 5/2005 dated 11.03.2017.

9. Whether, a government servant, who has rendered 21 long years service, could be or should have been dealt with so harshly in way of compulsory retirement, especially where complainant and one other, who are practicing lawyers at Darul Qaza, filed

160

ATTESTED  
EXAMINER  
Peshawar High Court

29

affidavits, and so needed to have been examined owing to the controversy being of factual nature, is a question which certainly needs to be answered either way during enquiry proceedings.

10. On acceptance of this petition, we are coordinated that the action against the petitioner Naib Qasid of the Sessions Division ought not to have been proceeded by the office of the worthy Registrar, and instead he should have been referred to his appointing authority for further action at that end. It is because the petitioner might be at sometime a favourite official of the then establishment. Purportedly, the petitioner succeeded in getting his designation changed from the post of Mali to Naib Qasid and then got himself posted against the vacant post in the establishment of this court. It depicts that there are some transfer/posing orders of office of the worthy Registrar of this Court issued from time to time, but none amongst these shows his adjustment as Naib

o-162

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

30

Qasid in the establishment of Hon'ble High Court. At the most all notifications in his favor are of his temporary positing, thus with utmost care and caution, we observe that he has never been on the strength of employees of Peshawar High Court and so he is recommended for his posting as Mali in his own Sessions Division where he was initially appointed as Mali. As soon as he joins under the authority in his designated post as Mali, he shall then be proceeded in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

11. If at all the petitioner has received any pensionary benefits upon his compulsory retirement, the concerned learned District & Sessions Judge shall allow him joining as Mali in his establishment but before that shall ensure that all benefits derived by him under his compulsory retirement are recovered. We are further constrained not to grant him any back benefits which eventually may be considered by the

112

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

31

concerned learned District & Sessions Judge if at all he is found innocent qua the allegations.

12. Copy of this judgment be sent to the Worthy Registrar of this Court for repatriation order of petitioner with pleasure of Hon'ble the Chief Justice of our venerate establishment and concerned learned District & Sessions Judge for further follow up under observations rendered in this judgment.

Announced.  
Dt: 26.09.2018

JUDGE

JUDGE

17359

No. 17359

Date of Presentation of Application 02/12/20

No of Pages 02/12/20

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Date of Preparation of Copy 02/12/20

Date of Delivery of Copy 02/12/20

Received By [Signature]

CERTIFIED TO BE TRUE COPY

EXAMINED  
Peshawar High Court, Peshawar  
Subscribed Under Article 67 of  
The Honourable High Court Order 1984

02 DEC 2020

INQUIRY REPORT AGAINST MR. SADAQAT ALI  
CHOWKIDAR.

The undersigned was entrusted an inquiry against Mr. Sadaqat Ali, Chowkidar vide office order dated 13/06/2019 of the learned Senior Civil Judge (Admn), Peshawar.

Brief Background:

Brief background of the inquiry is that on 28/01/2011 Mr. Saeed Khan Shangla Advocate filed written complaint against the accused/official before the worthy Registrar Peshawar High Court Peshawar alleging therein that one Mr. Akbar Khan Advocate of Swat informed him that his appeal against his acquittal is pending before the august Peshawar High Court Peshawar and the present accused/official entered into a commitment with him for dismissal of the said appeal on payment of handsome amounts. With this background Mr. Akbar Khan Advocate asked the complainant about the credential of the accused/official and the money being demand by him. The complainant further alleged that he informed the said Advocate not to make any payment as none in the august Peshawar High Court Peshawar can do anything by indulging in such like practice. Upon receipt of complaint, the statement of the present accused/official was recorded by the worthy Registrar Peshawar High Court Peshawar on 01/02/2011 and disciplinary action was directed to be initiated against the accused/official by appointing

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**ATTESTED**

20 JUL 2020

(Examiner)

High Court Peshawar

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Mr. Khurshed Iqbal MIT as authorized officer for further proceeding under the relevant rules through office order dated 03/02/2011. Thereafter, inquiry was initiated against the accused/official and after issuance of show cause notice, statement of allegation and final show cause notice to the accused/official which was properly replied by the accused/official, his statement was recorded on 13/04/2011. The learned authorized officer through report/recommendation dated 05/05/2011 recommended major penalty of removal from service. The Registrar august Peshawar High Court Peshawar through order dated 06/05/2011 award major penalty of compulsory retirement to the accused/official. Thereafter, departmental appeal was filed by the accused/official which was dismissed by the honorable Chief Justice Peshawar High Court Peshawar vide worthy order dated 16/09/2011. A review petition was also filed by the accused/official which was dismissed vide worthy order dated 16/10/2012. Thereafter, the accused/official filed writ petition before the august Peshawar High Court Peshawar which was accepted vide order dated 26/09/2018 and the learned Senior Civil Judge, Peshawar through office order dated 30/05/2019 reinstated the accused/official in service on vacant post of Chowkidar. Statement of allegation was also handed over to the accused/official. He was also charge sheeted by appointing the undersigned as inquiry officer.

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6.11.2019

Summoning of the Accused:

ATTORNEY GENERAL  
28 JUL 2019  
(Examiner)  
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344

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In order to proceed in the inquiry, notice was issued to the accused/official Mr. Sadaqat Ali who appeared before the undersigned and submitted his written statement/reply. In the written statement the accused/official contended that the complaint dated 28/01/2011 is false and fabricated. That any kind of complaint at his back may not be taken into account unless and until the complainant is not examined in his presence by providing an opportunity for cross examination to the complainant. He further denied the statement earlier allegedly recorded on 01/02/2011. He further contended that the complainant never said in his complaint that in his presence he promised Akbar Khan Advocate regarding dismissal of his appeal in lieu of bribe Rs. 100,000/-. That the allegation leveled against him in the charge sheet is totally false and baseless as the real aggrieved person has submitted an affidavit before the concerned authority during departmental proceeding wherein he denied the allegation leveled by the complainant.

MJ  
6-11-2018

Thereafter, notices were also issued to the complainant namely Muhammad Saeed Shangla Advocate and Muhammad Akbar Khan Advocate who appeared and their statements were recorded accordingly.

20 JUL 2018  
 (Examiner)  
 Court Peshawar

Findings

Perusal of the available record transpires that Muhammad Saeed Khan Shangla Advocate filed a written complaint addressed to the Registrar august Peshawar High Court Peshawar wherein he



alleged that Muhammad Akbar Khan Advocate who was involved in a criminal case and his acquittal appeal was pending before the august Peshawar High Court Peshawar informed him that the accused/official entered into a commitment with him for dismissal of that very appeal and also demanded some money in this regard. During the proceedings notice to the said Akbar Khan Advocate was issued, who appeared and recorded statement before the undersigned. In the said statement Muhammad Akbar Khan Advocate admitted that the accused/official has never demanded any amount as bribe or otherwise in respect of his case as decided by the august Peshawar High Court Peshawar. He further stated that he neither himself nor through any other person made any complaint against the accused/official. He also admitted his signature over the affidavit dated 17/02/2011 submitted before the august Peshawar High Court Peshawar. So, the statement of Muhammad Akbar Khan Advocate who is seen to be the real aggrieved person in no way supported the complaint dated 28/01/2011 as submitted before the Registrar august Peshawar High Court Peshawar. The complainant also recorded statement before the undersigned wherein he stated that he orally transmitted the allegation of the Muhammad Akbar Khan Advocate against the accused/official before the concerned official of the august Peshawar High Court Peshawar who reduced the same in the form of the complaint and again telephonically called him for appearance and signing of the complaint. This statement of the complainant means that he has not drafted the

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**ATTESTED**  
 20 JUL 2020  
 (Examiner)  
 Civil Court Peshawar



36

complaint rather it was drafted by someone else. At the end he stated that the complaint against the accused/official is based on the oral allegation of Muhammad Akbar Khan Advocate, however, as discussed earlier the said Muhammad Akbar Khan Advocate totally denied the allegation against the accused/official as leveled in the complaint. So, there is glaring contradiction between the statements of the real aggrieved person, the complainant and contents of complaint and the available record in no way supported the allegation leveled against the accused/official.

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In light of the above, the undersigned reached to the conclusion that there is no supportive evidence on behalf of the complainant party in favour of the complaint and thus, the allegation leveled against the accused/official has not been proved.

Inquiry report is submitted as desired, please.

M 6.11.2019.

(MUHAMMAD SOHAIL)  
Civil Judge-VII /Inquiry Officer,  
Peshawar.

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[Signature]

ATTESTED  
20 JUL 2020  
(Examiner)  
Civil Court Peshawar

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INQUIRY REPORT

In file # 37/6 of 2019 against "Muhammad Sadaqat Ali" serving as  
Chowkidar in the establishment of Learned Senior Civil Judge (Admin)  
Peshawar

BACKGROUND:

The under signed was entrusted the above mentioned inquiry vide Order # 10 dated 25.10.2020 in terms of Rule 14 (6) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 with following observations:

"It is deemed appropriate to further probe into the matter because on the one hand the complainant has admitted his signature on the complaint/affidavit against the accused/official and on the other hand he stated that he had signed the blank paper. Hence, the enquiry is sent to Mr. Khurram Shahzad, Learned C/JRC-I, Peshawar to inquire further into the matter & submit report within shortest possible time."

COMPLAINT:

On-28.01.2011; Mr. Saeed Khan Shangla Advocate (here-in-after the complainant) filed a complaint in writing before Worthy Registrar Peshawar High Court Peshawar against Mr. Sadaqat Ali Naib Qasid (here-in-after the accused/official) on information of Mr. Akbar Khan Advocate (here-in-after the informer) against who's acquittal appeal titled as "State through Zarin Khan Vs Muhammad Akbar Khan" was pending for adjudication before Worthy Peshawar High Court Peshawar & accused/official approached him for dismissal of this appeal in his favor as the accused/official entered into commitment with someone else. It was also added in the complaint that informer asked the complainant about the credentials of the accused/official and money demanded by him for

**ATTESTED**

28 JUL 2020

(Examiner)  
Civil Court Peshawar

Khurram Shahzad  
Rent Controller-I,  
Peshawar

06/06/20

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17

dismissal of above mentioned criminal appeal against his acquittal to whom complainant informed not to make any payment as none in High Court can do any things by indulging in such like practice. Complainant lastly requested for needful to be done.

SUMMONING OF PARTIES:

On receipt of complete file with record on 28.01.2020, both accused/official and Mr. Samin Jan Naib Nazir in the establishment of Learned Senior Civil Judge Peshawar who was deputed as Departmental Representative for the inquiry in hand were put on notice for 30.01.2020 upon which accused/official appeared and requested for attested copies of the proceedings taken up before which was allowed and on same date notices were also directed for both complainant and informer.

On 01.02.2020 both Departmental Representative and accused/official appeared by seeking time to proceed further in the inquiry whereas both complainant and informer were again issued notices through Learned Senior Civil Judge (Admn), Swat via fax and postal service for 08.02.2020, but none from both of them appeared.

Contact # of complainant was traced through the Office of Learned Senior Civil Judge (Admn) Swat as 0345-9429063 and was informed on 22.02.2020 at 09:32 am by Steno Typist in the Court of undersigned namely Muhammad Junaid upon which complainant acknowledged the service for himself and Muhammad Akbar Khan Advocate by assuring the attendance on 25.02.2020 but none from both of them appeared before undersigned, resultantly; undersigned is left with no other options but to proceed with the inquiry in absentia of both the complainant and informer.

PROCEEDINGS:

In terms of Rule 11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, accused/official was

**ATTESTED**

28 JUL 2020

(Examiner)  
Civil Court Peshawar

WJW:  
06/06/2020  
In-charge of the Court  
Rent Controller-I,  
Peshawar

given opportunity to submit his reply, who in writing on 11.02.2020 by filling written reply in shape of statement relied on all the proceedings conducted before previous inquiry officer Mr. Sohail Khan and further waived off his right to cross examine both the complainant as well as informer for their statements recorded before previous inquiry officer.

Accused/official was also given an opportunity of being heard personally who recorded his statement on 07.03.2020 by taking oath and further opted not to produce any evidence in favor of his stance or defense.

CHARGES TO BE INQUIRED:

Learned Senior Civil Judge (Admn) Peshawar being Competent Authority initiated Disciplinary Action against accused/official on basis of allegations made in the complaint followed by proceedings on same before the then Worthy Registrar Peshawar High Court Peshawar by considering accused official guilty of inefficiency & misconduct within the meanings of Rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 on 15.06.2019 upon followings grounds of allegation resulted into charge sheet:

- a. That you accused Mr. Sadaqat Ali, Naih Qasid, offered to one Mr. Akbar Khan, Advocate of Swat that you will arrange the dismissal of a Criminal Appeal (State through Zarin Khan versus Muhammad Akbar) against his acquittal, which was pending before the Peshawar High Court, Peshawar; and in lieu thereof you demanded a handsome amount of illegal gratification the allegations has been levelled against you by one Muhammad Saeed Khan Advocate of Shangla in an application dated 28.01.2011 to the Registrar, Peshawar High Court, Peshawar; your statement has been recorded in this context by the Registrar, Peshawar High Court, Peshawar, on 01.02.2011, wherein you have admitted that about twenty days before (the said statement) you had informed Mr. Akbar Khan

**ATTESTED**

28 JUL 2020

(Examiner)  
Civil Court Peshawar

Khuram Shahzad  
Rent Controller-I,  
Peshawar

06/06/20

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Advocate of Swat, about the next date fixed in his appeal before the Peshawar High Court, Peshawar.

- b. That you informed Mr. Akbar Khan Advocate for a second time to the effect that you had arranged with someone the dismissal of his appeal and you have admitted in your said reply dated 01.02.2011 that Mr. Akbar Khan offered you bribe of Rs. 100,000/- (One Lac) in response whereof you told him that you will make an arrangement with the opposite counsel in the appeal, who will try to delay the fixation of the appeal in the Peshawar High Court, Peshawar, which will result in transfer of the case to the Swat Bench of the Peshawar High Court.
- c. That you have also admitted in your statement dated 01.02.2011 that in presence of Mr. Saeed Khan Advocate, you promised with Mr. Akbar Khan Advocate that you will pay Rs. 100,000/- (One Lac) to Mr. Hussain Ali Advocate (the opposite counsel in his appeal) and will arrange the dismissal of the appeal right in the Peshawar High Court.

WRITTEN DEFENSE OF THE ACCUSED/OFFICIAL:

In response of charge sheet reproduced above the accuse/official replied on reply filed before Civil Judge-VII, Peshawar the Learned Inquiry Officer on 29.06.2019 by way of filling written statement on 11.02.2020 before the undersigned.

In his reply, he denied the allegations leveled against him and requested that Mr. Akbar Khan Advocate be summoned and be asked to give statement in his presence so as to unearth the true story in the best interest of justice. He further desired the statement of the complainant in his presence to the effect by providing him an opportunity of cross examination of the complainant.

**ATTESTED**  
20 JUL 2020  
(Examiner)  
Civil Court Peshawar

Khuram Shaukat  
Rent Controller  
Peshawar  
19-11-2020

**ATTESTED**  
20 JUL 2020  
(Examiner)  
Civil Court Peshawar

411

16

17

For his statement dated 01.02.2011, he clarified that same is not of him nor signed by him which is in marked contradiction with the complaint filed against him.

He in Para 03 of his reply narrated in the following words:

*"That all what happened was that the said Akbar Khan Advocate discussed with me about the arrangement of a competent counsel for his defense in the presence of Mr. Saeed Khan Shangla Advocate and about the approximate fee of the counsel for his defense upon which it was Mr. Saeed Khan Shangla Advocate who told him that the fees of the counsel at High Court level are high and nothing more."*

He lastly by relying on the affidavit of Mr. Akbar Khan Advocate to the concerned authority who as per his version is the real aggrieved person requested filling of present departmental proceedings and exoneration from the charges leveled against him.

STATEMENT OF MR. AKBAR KHAN ADVOCATE:

On.20.07.2019 Mr. Akbar Khan Advocate appeared before previous inquiry officer Mr. Muhammad Sohail, Learned Civil Judge-VII, Peshawar and recorded his statement on oath that accused/official never demanded any amount as bribe or otherwise in respect of my case titled as "State through Zarin Khan Vs Muhammad Akbar" as decided by august Peshawar High Court Peshawar. He further stated that he just discussed in presence of Mr. Saeed Khan Shangla Advocate about the engagement of a competent counsel in his case and his professional fee for the same, so it was Mr. Saeed Khan Shangla Advocate who informed him that the professional fee at High Court level for conduction a criminal case (appeal) is very high. He lastly endorsed his affidavit dated 17.02.2011 filed before august Peshawar High Court Peshawar by showing no grievance against accused/official and submitted that he himself nor through any person made a complaint against the accused/official.

**ATTESTED**

20 JUL 2020

(Examiner)  
Civil Court Peshawar

Khuda Shabaz  
Rent Controller  
Peshawar  
06/07/2020

He was not cross examined at all despite of opportunity to the accused/official or departmental representative by the undersigned.

STATEMENT OF COMPLAINANT:

On 26.10.2019 Muhammad Saeed Khan Shangla Advocate appeared before Learned Civil Judge-VII the previous inquiry officer and on oath stated that Akbar Khan Advocate is his class fellow who was involved in a criminal case regarding appeal against his acquittal before Worthy Peshawar High Court Peshawar. He further stated that said Akbar Khan Advocate sought his opinion from him regarding his criminal appeal and allegations leveled in the complaint dated 28.01.2001 against the accused official as submitted. He orally transmitted the allegations of the Akbar Khan Advocate against the accused official to the concerned official of the Worthy Peshawar High Court Peshawar who subsequently reduced the same in the form of the complaint and again on telephonic call he signed the complaint. He lastly added that his complaint is based on basis of oral allegations of Akbar Khan Advocate.

He was not cross examined at all despite of opportunity to the accused/official or departmental representative by the undersigned.

STATEMENT OF ACCUSED/OFFICIAL:

At last on 07.03.2020 accused official personally appeared and on oath stated that presently he is working as Chowkidar in the establishment of Learned Senior Civil Judge (Admn) Peshawar and he was unaware of complaint against him by Muhammad Saeed Khan Shangla Advocate. He further stated that he was on duty when he was informed of complaint and notice was issued to him by initiating inquiry for which he also filed reply. He categorically denied his relationship with both the advocates and admitted it correct that both the advocates recorded their statements in his presence before Mr. Sohail Khan Learned Civil Judge-VII the previous inquiry officer.

*(Signature)*  
Sohail Khan  
Inquiry Officer  
Peshawar

**ATTESTED**  
28 JUL 2020  
(Examiner)  
Civil Court Peshawar

*(Signature)*



430

12

For deputing counsel he stated that he has not discussed about engaging the counsel and when he was going towards vehicle in High Court building, in way Akbar Khan Advocate in presence of Saeed Shagla Advocate, asked him to engage the counsel if criminal appeal against his acquittal is fixed upon which it was Saeed Shagla Advocate who said that here fee of counsels are high. Afterwards both left and he has not stated a single word.

He lastly admitted all his statements & replies except statement taken by Mr. Lodhi and closed his statement by adding that no complaint was made against him in his 22 Years of service.

He was also not cross examined due to absence of complainant.

FINDINGS:

In terms of Rule 11 (1) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, undersigned is left with no other option when accused/official relies on available record and proceedings held before Mr. Muhammad Sohail Khan Learned Civil Judge-VII, Peshawar/Inquiry Officer and complainant not opted to join the proceedings despite of his service, to inquire the charges on basis of available record on file.

It is admitted on record as well as from the statement of complainant recorded on 26.10.2019 that allegations made in the complainant reduced in writing on 28.01.2001 was made by him on basis of oral allegations of Akbar Khan Advocate, against whom a criminal appeal against his acquittal was pending for adjudication-before Worthy Peshawar High Court Peshawar.

Mr. Akbar Khan Advocate denied the allegations leveled in the complaint and asserted that he only asked accused/official to arrange the counsel for him to conduct criminal appeal against his acquittal pending for

ATTESTED

20 JUL 2020

(Examiner)  
Civil Court Peshawar

WU  
Khuram Shahzad  
Revenue Officer  
Peshawar

13

20

adjudication but about high fee rates it was Mr. Saced Shangla Advocate who responded for counsels at Peshawar to conduct criminal appeal.

Accused/official denied the allegations leveled against him in complaint and categorically admitted that Mr. Akbar Khan Advocate asked him to engage the counsel for defending criminal appeal pending against his acquittal if appeal is fixed for regular hearing. In his admitted written reply submitted on 18.02.2011 filed before AMIT-1 of Worthy Peshawar High Court Peshawar, he also admitted it correct that he has informed Mr. Akbar Khan about the fixation of the case and nothing more but before undersigned, the accused official on oath stated that he does not know both Akbar Khan Advocate and Saeed Shangla Advocate than *how he is supposed to tell Mr. Akbar Khan Advocate about fixation of case or why Mr. Akbar Khan would ask accused/official to engage the counsel in a way to conduct criminal appeal pending before Worthy Peshawar High Court Peshawar?*

These questions put reasonable doubts upon conduct of the accused/official when at one hand he denies any relation with both the Advocates and on the other hand he admits the conversation about engagement of counsel and intimation about fixation of date.

This act when considered in terms of definition of misconduct given in Rule 02 (1) (i) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, it can safely be concluded that same is prejudicial to good order and service discipline because accused/official Class-IV employee in the establishment of Worthy Peshawar High Court Peshawar working a driver was not supposed to intimate the fixation of date or involve in engagement of a counsel for a person not known to him in a criminal appeal pending for adjudication before bench, which simply opened the doors for complaint against him.

**ATTESTED**

20 JUL 2020

(Examiner)

High Court Peshawar

Registrar  
High Court  
Peshawar

06  
2020

As far as allegations of demanding illegal gratifications and his statement recorded on 01.02.2011, in this regard there is nothing on record and Mr. Akbar Khan Advocate on oath denied these assertions thus it is obvious that charges of corruptions and admission of guilt by recording statement before Worthy Registrar of Peshawar High Court Peshawar are not having any evidence stands disproved.

RECOMMENDATIONS:

On basis of above made discourse and preponderance of available record with statements on inquiry file when it is affirmed that accused/official being guilty of misconduct only, minor penalty of "Censure" in terms of Rule 04 (a) (i) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 is recommended as accused/official has suffered enough for his conduct since 06.05.2011 till 30.05.2019.

Dated: 06.06.2020

*Handwritten: DWZ, 06/06/2020*  
KHORRAM SHAHZAD  
RC-1 Inquiry Officer  
Khorram Peshawar  
Recd Controller  
Peshawar

CERTIFICATE:

Certified that this report of mine consists of 09 (Nine) Sheets and each sheet has been duly signed by me after necessary corrections therein.

*Handwritten: DWZ, 06/06/2020*  
KHORRAM SHAHZAD  
RC-1 Inquiry Officer  
Khorram Peshawar  
Recd Controller  
Peshawar

**ATTESTED**  
20 JUL 2020  
(Examiner)  
High Court Peshawar

*Handwritten signature*



DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR

Phone: 091-9213534  
eMail: scjpeshawar@gmail.com  
Web: www.SessionsCourtPeshawar.gov.pk

No 32  
Dated Peshawar 19-6-2020

OFFICE OF THE SENIOR CIVIL JUDGE (ADMN), PESHAWAR

Or.....26  
19.06.2020.

None present.

Instant inquiry report was received from the court of Inquiry Officer/learned Civil Judge, Khurram Shahzad.

Perusal of the record would show that Akbar Khan Advocate has submitted affidavit dated 18.02.2011 in which he negates that the accused/official under inquiry has demanded money as bribe/illegal gratification from him. The complainant, Saeed Khan Shangla Advocate, has stated on oath vide affidavit dated 15.04.2011 that he was informed by Akbar Khan Advocate that someone is demanding money from him for managing/arranging the dismissal of criminal appeal pending against him before the Honourable Peshawar High Court Peshawar. He does not specifically mention the name of accused who had demanded money as bribe from Akbar Khan Advocate.

*Alwan*  
19/06/2020  
MUHAMMAD SHEER AZI KHAN  
Senior Civil Judge, (ADMIN)  
Peshawar


ATTESTED  
20 JUL 2020  
(Examiner)  
Court Peshawar

Cont. Or. 26  
19.06.2020

The statement of the accused, recorded before the Inquiry Officer, unequivocally and explicitly indicate that he has talked to Akbar Khan Advocate and Saeed Khan Shangla Advocate about the engagement of a counsel in the criminal appeal against the former i.e. Akbar Khan Advocate. The official under inquiry was serving as Naib Qasid in the honourable Peshawar High Court Peshawar and he was exploiting his position by asking Akbar Khan and Saeed Khan Shangle Advocates for engaging a counsel for the former in the criminal appeal pending against him from which something foul is smelt as they were lawyers and they knew very well about the competent lawyers practicing in the criminal law before Honourable Peshawar High Court Peshawar.

The report of the Inquiry Officer is elaborate, exhaustive and well reasoned, hence, agree with.

In light of the above discussion, accused is exonerated from the charges of demanding illegal gratification/bribe/ corruption, whereas, he is reprimanded and castigated for his conduct

  
MUHAMMAD SHER ALI KHAN  
Senior Civil Judge, (ADMIN)  
Peshawar

WITNESSED

20 JUL 2020

(Examiner)

Court Peshawar

486

conduct as it was prejudicial to good order and service discipline, hence, he is censured.

Case file be consigned after its necessary completion.

24

ANNOUNCED  
19.06.2020.

MUHAMMAD SHER ALI SHAH  
Senior Civil Judge (Admin)  
Peshawar  
19/06/2020  
MUHAMMAD SHER ALI KHAN  
Senior Civil Judge, (ADMIN)  
Peshawar

CERTIFIED TO BE TRUE COPY

Copyist  
Peshawar Court

|                       |         |
|-----------------------|---------|
| No...                 | 16386   |
| D                     | 20/7/20 |
| Agent                 | 20/7/20 |
| es                    | P-57    |
| of Registrar A. U. S. |         |
| Registration          | 20-7-20 |
| Date                  | 20/7/20 |

Am'l F's

(49)

To,

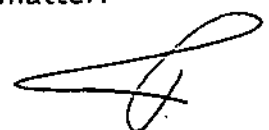
The Honourable  
District and Sessions Judge  
Peshawar

Subject: - DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 19-06-2020 (COMMUNICATED AND HANDED OVER TO THE APPELLANT ON 20-07-2020) OF THE LEARNED SENIOR CIVIL JUDGE (ADMIN), PESHAWAR; WHEREBY THE APPELLANT HAS BEEN CENSURED AND FOR GRANT OF ALL BACK BENEFITS W.E.F 06-05-2011 TILL REINSTATEMENT

Respected Sir,

With due respect, I have the honour this departmental appeal for your kind consideration and favour action on the following facts:-

- 1) That the Appellant was initially appointed as Naib Qasid on 10<sup>th</sup> July, 1989 in the District Courts Peshawar and was later on transferred to the Honourable Peshawar High Court, Peshawar on 12<sup>th</sup> April, 1996.
- 2) That since his appointment, the Appellant has served the entire satisfaction of his high-ups and throughout his service career, no complaint, disciplinary action etc was ever filed/taken against him.
- 3) That on 06-05-2011 vide impugned order, penalty of compulsory retirement was imposed on the Appellant.
- 4) That Appellant being aggrieved of the order ibid, filed writ petition No 3472-P/2012 before the Honourable Peshawar High Court, Peshawar; which was accepted vide order and judgment dated 26-09-2018. (Copy annexed herewith).
- 5) That in compliance with the order by Honourable Peshawar High Court, Peshawar in writ petition No 3472-P/2012 dated 26<sup>th</sup> September, 2019; the competent authority was pleased to order denovo in against the Appellant.
- 6) That vide inquiry report dated 06-11-2019, the learned Inquiry Officer exonerated the Appellant from the charges leveled against him. (Copy annexed herewith).
- 7) That vide order dated 25-10-2020, the competent authority again ordered for inquiry to enquire further into the matter.



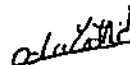
- 8) That in view of inquiry dated 06-06-2020, the competent authority imposed minor penal of "censure" upon the Appellant. (Copy annexed herewith).
- 9) That it is worth mentioning that although the impugned order was passed on 19-06-2020; however, the said order was communicated to the Appellant on 20-07-2020 and the Appellant received attested copy of the same dated i.e. 20<sup>th</sup> July, 2020; hence the appeal is well within time.
- 10) That the Appellant being aggrieved from the impugned order dated 19-06-2020, prefers this departmental appeal before your honour on the following grounds:-

GROUNDS:-

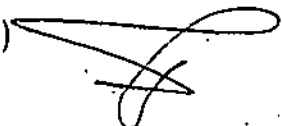
- A) That the charges against the Appellant are false, fabricated and baseless, as is evident from the inquiry report.
- B) That despite the fact, that Inquiry Officer exonerated the Appellant from all the charges as leveled against the Appellant in the statement of allegation and charge sheet; however the impugned order was passed, which is unjust, unfair and hence not sustainable in the eye of law.
- C) That no ground whatsoever was available to the competent authority to impose minor penalty in shape of "censure" upon the Appellant. Furthermore, there was no such allegations in the charge sheet on the basis of which the Appellant has been censured.
- D) It is pertinent to mention here that in para No 11 of writ petition No 3472-P/2012 dated 26-09-2018, the Honourable Peshawar High Court, Peshawar has made direction to the learned District and Sessions Judge regarding back benefit of the Appellant.

In view of the above, it is therefore, humbly prayed that the impugned order dated 19-06-2020 may graciously be set aside and all back benefits w.e.f. 06-05-2011 till reinstatement may kindly be granted to the Appellant.

Yours sincerely;



(SADAQAT ALI)  
Naib Qasid



Dated:-05<sup>th</sup> August, 2020



بعد التخصیص



موری

مقدمہ

دعوی

جرم

2020ء منجانب

صداقت بنام

حکومت

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام کے لئے رجوع کیا گیا ہے۔

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برابری اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔ کوئی تاریخ پیشی مقام دوزہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2020ء

ماہ دسمبر

2

المرقوم

العہدہ

Acceptance کے لئے منظور ہے۔

PO

مقام



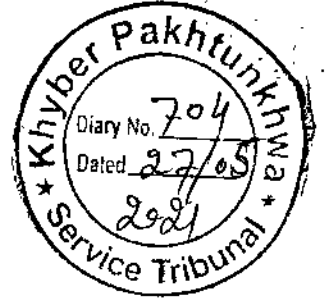
**DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR**

Ph#091-9210099 Fax#091-9212419  
eMail: scPeshawar@yahoo.com  
web: SessionsCourtPeshawar.gov.pk

No. 3308  
Dated Peshawar 26/5/21

To

The Learned Registrar,  
KP Service Tribunal,  
Peshawar.




Subject: **REPLY TO SERVICE APPEAL NO. 15578/2020**  
Sadaqat Ali ....vs.... PHC etc

Respected Sir,

I am directed to submit herewith para-wise reply to the subject appeal duly signed by all the respondents alongwith necessary/relevant documents, please.

Encl: AS ABOVE

  
Muhammad Ilyas, Superintendent,  
Sessions Court, Peshawar.

Put up to the court with  
relevant appeal.

Lead dw.

27/5/2021

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 15578/2020**

**Sadaqat Ali .....Appellant**

**Versus**

**PHC..... Respondents**

**INDEX**

| <b>S:#</b> | <b>Description of Documents</b> | <b>Date</b> | <b>Annexure</b> | <b>Pages</b> |
|------------|---------------------------------|-------------|-----------------|--------------|
| 1.         | Memo of Reply with Affidavit    |             |                 | 1-4          |
| 2.         | Reply                           | 01.02.2011  | Reply/1         |              |

**Respondents**

**Through**

**Government Pleader**

**Dated: \_\_\_/04/2021**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 15578/2020

Sadaqat Ali .....Appellant

Versus

PHC..... Respondents

---

**REPLY ON BEHALF OF RESPONDENTS.**

---

Respectfully Sheweth,

**Preliminary objections.**

- I. That the impugned order was issued on 19.06.2020 while the appellant availed the departmental remedy on 05.08.2020, therefore, the same does not qualify the requirements of Rule-3 of the Khyber Pakhtunkhwa Civil Servants Appeal Rules, 1986 read with Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 as has held time and again by the Superior Courts that when the departmental appeal is barred by time the Service Appeal will be incompetent and there is no need to discuss the merit of the case.
- II. That the instant appeal is defective within the meaning of Section-4(ii) of the Khyber pukhtunkhwa Service Tribunal Act, 1974 which stipulates that no appeal shall lie to the Tribunal against an order or decision of a departmental authority determining the quantum of departmental punishment or penalty imposed on a civil servant as a result of departmental inquiry thus, keeping in view the fact and circumstances of the case Respondents by taking a lenient view inflected a the minor penalty of Censure upon the appellant.
- III. That the appellant has got no cause of action to file the instant appeal because during enquiry proceedings appellant has completely failed to justify his position before the Inquiry Officer hence, rightly been burdened

vide impugned order.

- IV. That appellant was provided enough opportunity of defence by the Inquiry Committee to washout the charges as leveled against him but he categorically admitted the charges in his reply, therefore, on this score too appellant having no cause of action or locus standi to invoke the jurisdiction of this Hon'ble Tribunal. Moreover, appellant was estopped by his own conduct to agitate his grievance.
- V. That the appellant has concealed material facts from the Hon'ble Tribunal and has not approached the Hon'ble Tribunal with clean hands, therefore, the instant appeal merits outright dismissal.

**Reply to Facts:**

1&2. Needs no reply.

3&4. Correct to the extent of imposition of major punishment of compulsory retirement vide order dated 06.05.2011. It would be relevant to aver here that a practicing lawyer Mr. Saeed Khan Shangla lodged a complaint dated 02.01.2011 against the appellant regarding illegal gratification which was processed by Respondent No.1 wherein he narrated that Mr. Anwar Khan, Advocate who was his class fellow and was implicated in a criminal case whose Acquittal Criminal Appeal titled "***State through Zareen Khan.. v/s.. Muhammad Akbar Khan***" was pending adjudication before the Peshawar High Court, Peshawar. Appellant was discharging his duties as a Class-IV entered into a commitment with Mr. Akbar Khan, Advocate (Accused) for the dismissal of the said appeal on payment of handsome amount. Mr. Akbar Khan, Advocate informed Mr. Saeed Khan, Advocate regarding the said deal and contended that appellant had approached him for dismissal of appeal in his favor. Upon receipt of complaint the statement of the appellant was recorded by the Respondent No.1 on 02.11.2011 and thereafter he was issued Charge Sheet and Statement of Allegations to which he replied but the same were not found to be satisfactory. Accordingly, vide office order dated 06.05.2011 he was imposed upon the major punishment of compulsory retirement from service. Feeling dissatisfied he preferred departmental appeal which was turned down and his review petition also met the same fate on 15.12.2011. Appellant being

further aggrieved invoked the jurisdiction of Peshawar High Court, Peshawar in Writ Petition bearing No.3472-P/2012 which was adjudicated on 26.09.2018 vide *Page 19 of the Service Appeal*. It is noteworthy to adduce here that the writ petition was accepted on technical grounds and the matter was transmitted to Respondent No.2 to decide afresh.

5-7. Regarding para No.5-7 of the instant service appeal it is submitted that as per law it is the exclusive prerogative of the competent authority when not satisfied that the inquiry has not been conducted in accordance with law and facts or merits of the case have been ignored or there are other sufficient grounds to initiate another inquiry. The facts which were not properly appreciated by the inquiry officer are as under:-

- (i). That appellant in his reply dated 01.02.2011 (*Annex:- Reply/1*) acceded to that he would arrange the dismissal of the criminal appeal which was pending before the Peshawar High Court, Peshawar thereon he demanded a handsome amount of illegal gratification. It is further asserted that appellant himself admits that about 20 days before the said statement he had informed Mr. Akbar Khan Advocate (Accused facing trial) about the next date of his appeal, therefore, the narration made by the appellant proves the allegation leveled against him without any shadow of doubt.
- (ii). It would not be out of place to allege here that appellant again informed Mr. Akbar Khan, Advocate that he had arranged/made deal with someone for dismissal of his appeal, He further admitted in his reply dated 01.02.2011 that Mr. Akbar Khan, Advocate/accused had offered him bribe of rupees one lac in response whereof appellant told him that he would make arrangement/deal with the opposite counsel in the appeal, who would try to delay the fixation of the appeal which will result in transfer of the appeal to the Swat Bench of Peshawar, High Court, Peshawar.
- (iii). It would also be momentous to mention here that appellant further admitted that in presence of Mr. Saeed Khan Shangla

Advocate he promised accused that appellant would pay rupees one Lac to Mr. Hussain Ali, Advocate (the opposite counsel in his appeal) who will also arrange the dismissal of the appeal right in the Peshawar High Court, Peshawar.

It is further apprised that statement of Mr. Muhammad Saeed Khan Shangla, Advocate was also recorded and relied upon the earlier complaint. It would be significant to aver here that appellant was provided a chance of cross-examination but was deliberately not cross-examined. The statement of the appellant was also recorded by the Inquiry Officer but the same was found in active contradiction by holding that:-

*“These questions put reasonable doubts about conduct of the accused/official when at one hand he denies any relation with both the advocates and on the other hand he admits the conversation about engagement of counsel and intimidation of fixation of date”*

Therefore, appellant rightly found guilty and was rightly imposed upon the minor penalty and that too by taking a soft view.

8&9. Incorrect hence not admitted. As already expounded hereinabove that appellant was supposed to raise his grievance before the Appellate Authority within the prescribed period of 30 days, thus, on this score too the instant appeal is liable to be turned down. Moreover, irrespective of the gravity of the matter appellant was only reprimanded and castigated for his conduct being prejudicial to good order and service discipline thus, he was awarded minor penalty of censure.

10. Incorrect. Detailed reply has already been averred in the preceding paras.

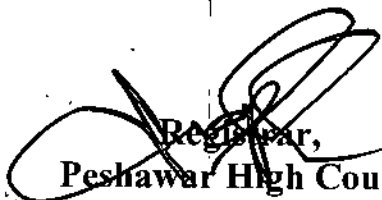
**GROUND:**

A&B. Incorrect hence not admitted. Appellant was treated in accordance with law and Rules.

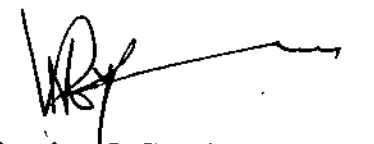
C&D. Incorrect hence vehemently denied. The detailed reply has already been given in the preceding paras.

E. Respondents would also take further grounds during the course of arguments.


It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.



Registrar,  
Peshawar High Court,  
Peshawar



District & Sessions Judge,  
Peshawar



Senior Civil Judge (Admin)  
Peshawar

Through

Government Pleader

Dated: \_\_\_/04/2021



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.15578/2020**

**Sadaqat Ali ..... Appellant**

**Versus**

**The Registrar PHC etc. .... Respondents**

**Counter Affidavit**

I, Muhammad Ilyas, Superintendent, Sessions Court Peshawar  
do hereby affirm and declare on oath that the contents of these Reply are  
true and correct to the best of my knowledge and nothing has been concealed  
from this Hon'ble Tribunal.

  
Deponent

بیان کیا کہ میں سال ۱۹۸۹ میں نائب قاضی لہری نے اپنی

ذیادہ تر وقت میرا ہی پروٹوکول میں گزارا ہے جبکہ عدالت عالیہ  
میں لہندہ قاضی، نظیر عالم صاحب اور فیاض الرحمن صاحب  
کے ساتھ بھی کام کیا ہے

تقریباً بیس دن قبل اکیبر خان ایڈووکیٹ نے مجھے

فون کیا کہ اسکے مقدمہ زیر سماعت در عدالت عالیہ  
کی بابت معلومات رکے مجھے مطلع کرنے میں صبر

میں صبر سے معلومات حاصل کرنے کی نذر عہد سعید خان ایڈووکیٹ نے سوان

الذی اؤ اؤ مذکورہ سے مطلع کیا

اکیبر خان نے مجھے یہ بھی کیا تھا کہ اگر صبر الہی سوان میں زیر

سماعت ہو تو اسکی پر امر کوئی فرج ہو گا تو میں ادا کروں گا

اور ایک لاکھ تک میں ادا کروں گا جسکی جو ابھی ہے کہ نہ

میں کسی سے بات کرے نیز وہ سب کروں گا لیکن اسکے مخالف نہیں

کے ذریعہ و شش کروں گئے وہ مقدمہ میں تاریخ نہ ملوانے تاکہ یہ  
مقدمہ حاضر ہو کر سوان Bend ملا جائے

میں اکیبر خان کے ساتھ سعید خان ایڈووکیٹ کے موجودگی میں

کہ بات بھی ہوئی کہ میں ایک لاکھ روپے حسین علی ایڈووکیٹ

(وہ بھی مخالف) کو دے کر اسکی مقدمہ کو روک لیں اور  
میں سے فارغ کر دوں گا۔

میں سعید خان ایڈووکیٹ کے ہمراہ اپنی منگلی والے سوان گیا تھا جہاں پر  
بچے دن لکھے تھے ایسا دو دنوں کے دوران سعید خان عدالت اکیبر خان کے  
ساتھ ہو گیا تھا۔ - سنٹر درستی حکم کیا -

11/2/11  
Maw