FORM OF ORDER SHEET [10,100]

Court of

Appeal No. 2316/2023

S:No.	Date of order proceedings	Order or other	proceeding	s with sign ·	iature of	judge		** *.	•
1	proceedings 2				3	;			•
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`1-··	08/11/2023	,	Гће арре	al of Mr	. Saif I	Ullah resu	bmitted	today	y by
-		Mr. Mukar	nil Shah	r, Taske	en A	dvocate.	It is f	īxed	for
		preliminary	hearing	before	Single	e Bench	at Pesh	awar	on
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		appellant.				· · · · · · · · · · · · · · · · · · ·			
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The appeal of Mr. Saifullah son of Rushan Khan r/o-Urmar Payan Peshawar received today i.e on 06.11.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Appeal has not been flagged/marked with annexures marks.

2- Annexures of the appeal is unattested.
3- Check list is not attached with the appeal.

4- Memorandum of appeal is not signed by the appellant.

- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal be placed on it.
- 6- Approved file cover is not used.

7- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 3524 /S.T.

REGISTRAR

SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

MUkamil Shah Taskin Adv. High Court Peshawar.

6.

Resubmille .

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In Re S.A <u>23/6</u> /2023

Saifullah

VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Wild Life Peshawar and others

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Dated: 06/11/2023

Appellant

Through

Mukamil Shah Taskin

Advocate High Court Peshawar.

In Re S.A 23	6		
		4	ļ.
Saifullah S/o Ru	shan Khan R/o	Urmar Payan P	eshawar
Ex-Mali Peshaw	ar, Zoo Peshaw		
· ·		(A	ppellant

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary Wild Life Peshawar.
- 2. Chief Conservator Wild Life Khyber Pakhtunkhwa, Peshawar.
- 3. Director / Conservator Wild Life Peshawar Zoo Peshawar.

..... (Respondents).

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 REGARDING
THE ORDER DATED 21.07.2023 & THAT OF
06.10.2023 VIDE WHICH THE
DEPARTMENTAL APPEAL OF THE
PETITIONER WAS DISMISSED.

Prayer:

ON ACCEPTANCE OF THIS APPEAL BOTH THE ORDERS IMPUGNED DATED 21.07.2023 & 06.10.2023, PASSED BY THE

RESPONDENTS NO.2 AND 03
MAY KINDLY SET ASIDE, THE
SERVICE OF THE APPELLANT
MAY KINDLY BE RESTORED ON
HIS REINSTATEMENT TOWARDS
HIS SERVICE WITH ALL BACK
BENEFITS, LEAVING TO AFFECT
THE SENIORITY OF THE
APPELLANT, WITH ANY OTHER
REMEDY COMES AVAILABLE TO
THE APPELLANT MAY ALSO BE
AWARDED IN THE ENDS OF
JUSTICE.

Respectfully Sheweth

- 1. That appellant, after complying with the formalities and meeting with the prerequisite, specified for the post, was appointed as Mali on 04.09.2019.
- 2. That conduct of the appellant is perform in the status of Mali was never face adverse remarks nor been subjected to any departmental inquiry as is clear from his service record.
- 3. That absence, restrained to be conveyed due to health because of accident caused to the appellant on 15.05.2021, but at getting recovered the resumption of duty was

3

intended but the department refused to joining of the appellant, rather to handed over and order dated 21.07.2023, the removal of the appellant service. (Copy of the order is attached as annexure "A").

- 4. That the order referred above was question in a departmental representation with in a stipulated period of time but was turned down on 06.10.2023. (Copy of the orders are attached as annexure "B & C").
- 5. That despite having conducted no inquiry a questioner was forwarded after receiving the departmental appeal which was duly replied the date of questioner is 28.09.2023. (Copy questioner appeal is attached as annexure "D").
- 6. That since both the orders impugned are nullity in the eyes of law. Therefore not sustainable and are required to be set aside on the following grounds.

GROUNDS:

A. That the orders impugned passed by respondent No.2 & 3 are against Law, facts

circumstances and justice. Therefore are not sustainable and liable to be set aside.

- with accused Govt servant on the stance of misconduct. The allegation of any kind are to be subjected through inquiry constituted under section 4 and 5 of the rules as referred who shall act upon the allegation, get the material provide opportunity for personal hearing but not as referred as ever been attempted which is grace miscarriage of justice proving the appellant innocent making him entitled to be reinstated on his service with all back benefits.
 - C. That the impugned dismissal order is illegal, unwarranted, against the facts and circumstances and is liable to be set a side.
 - D. That no inquiry was ever conducted in presence of the Appellant nor any inquiry dispensation order was ever issued, even then the major penalty was imposed upon the Appellant which is against the law governing the subject & rules therein.

- E. That no charge sheet & no statement of allegations were ever issued to the Appellant & thus the mandatory instruments of law are missing in case of the Appellant.
 - F. That even no proper right of defense was ever extended to the Appellant nor was heard in person & even then the harshest penalty was imposed which on part of the respondent department is an unlawful act.
 - G.That even no Final Show Cause Notice was ever issued which is a mandatory provision of law even if no inquiry is made or advised or dispensed with.
 - H. That it is a cherished principle of law that where a law requires a thing to be done in a particular manner, then that has to be done in particular manner and not otherwise.
 - I. That the opportunity of personal hearing was also not extended to the Appellant and thus was condemned unheard & because of the same grave violation of the Rules took place in case of the Appellant.
 - J. That from every angle the impugned dismissal order is wrong illegal unwarranted and is liable to be set-a-side, and the

Appellant is entitled to be re-instated into. service with all back benefits.

K. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.

It is therefore, most humbly prayed that on acceptance of this appeal both the orders impugned dated 21.07.2023 & 06.10.2023, passed by the respondents No.2 and 03 may kindly set aside, the service of the appellant may kindly be restored on his reinstatement towards his service with all back benefits, leaving to affect the seniority of the appellant, with any other remedy comes available to the appellant may also be awarded in the ends of justice

Dated: 06/11/2023

Appellant

Through

Mukamil Shah Taskin Advocate High Court Peshawar.

NOTE:-

No such like appeal for the same appellant upon the same subject matter has earlier been filed by me before this Hon'ble Tribunal.

Advocate

/2023 In Re S.A

Saifullah

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Wild Life Peshawar and others

ADDRESSES OF PARTIES

APPELLANT.

Saifullah S/o Rushan Khan R/o Urmar Payan Peshawar Ex-Mali Peshawar, Zoo Peshawar.

RESPONDENTS:

of Khyber

Through

Pakhtunkhwa through

1. Government Secretary Wild Life Peshawar.

2. Chief Conservator Wild Life Khyber Pakhtunkhwa,

Peshawar.

3. Director / Conservator Wild Life Peshawar

Zoo

Peshawar.

Dated: 06/11/2023

Appellant

Mukamil Shah Taskin

Advocate High Court

Peshawar.

In Re S.A _____/2023

Saifullah

VERSUS

Government of Khyber Pakhtunkhwa through Secretary

Wild Life Peshawar and others

AFFIDAVIT

I, Saifullah S/o Rushan Khan R/o Urmar Payan Peshawar Ex-Mali Peshawar, Zoo Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied appeal is true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

CNIC#: 17301-1272379-9

Cell: 0333-9189442

Identified By

Mukamil Shah Taskin Advocate High Court Peshawar.

DATED ISSUED BY MUHAMMAD NIAZ DIRECTOR/ CONSERVATOR WILDLIFE PESHAWAR ZOO, PESHAWAR

Mr. Saif Ullah Mali (BPS-03), a regular employee at Peshawar Zoo since 04/09/2019. The official has been willfully absent from his official duties since 15/05/2023, despite issuance of multiple explanations/letters from both his reporting officer Administrative Officer/SDWO Peshawar Zoo vide letter No. 938/AO-Zoo dated Zoo letter Directo Conservator Wildlife Peshawar No. 2896/P-Zoo dated 06/06/2023 and Mo.2339/P-Zoo dated 12/06/2023. Warning the letters were also sent on his home address through a registered post/ acknowledgement but he neither bothered to attend the office resume duty nor responded any of the letters and continuously remained absent from official duties. Notice was also served to the said official in print media/newspaper "Daily Mashriq" dated 29/06/2023 but he did not respond till date.

the said Keeping in view the above facts, since i.e. Mr. Saif Ullah Mali (BPS-03) is willfully absent from his official duties since 15/05/2023 without any intimation and approval of the competent authority as required under the rules, therefore I, Muhammad Niaz Director/Conservator Wildlife Peshawar Zoo empowered under the rules 9 of Efficiency and Disciplinary Rules 2011 hereby impose the major penalty of "Removal from Service" upon Mr. Saif Ullah Mali (BPS-03) Peshawar Zoo vide Rule 4 (b)(iii) of the rules ibid from the date of his absence from duty i.e. 15/05/2023.

(Muhammad Niaz) Director/Conservator Wildlife Peshawar Zoo, Peshawar

No. 168-173 /P-Zoo,

Copy forwarded for information and necessary action to the:-

- Chief Conservator Wildlife Khyber Pakhtunkhwa Peshawar.
- Deputy Director/DFO Wildlife Peshawar Zoo. 1. 2.
- Administrative Officer/SDWO Peshawar Zoo. 3.
- Accountant Peshawar Zoo.
- Mr. Saif Ullah Mali (BPS-03) Mohallah Mandori Urmar Payan, Peshawar. 15. **Д**б.

Director/Conservator Wildlife "Poshawar Zoo, Peshawar

ربن والشاني والشاني والشاني Surgeon Dr. Muhammad Ibrahim Barki MBBS (Pesh), MCPS (G. Surgery) <u>آم امراض</u> F.C.P.S (II) G. Surgery "گرده،مثان» پیته، پیتری، بواسیر ایم بی بی ایس (پیاور) ایم می بی ایس (جزل سرجری) **District Surgeon Badaber** ایندُکس، ہرنیا،معدہ،آنت جگر ایف پی ایس (۱۱) جزل سرجری و شرک سرجن بڈھ بیر سپتال پشاور Hospital Peshawar. Sarfullah Age 2573 Sex 2011 Date 15/05/25 Clinical Record · Hay Byrn on The (PH) des o Gaugn patch o mutile Dipe Neifeel . O. To Misini e Antibiota (00 12 -12) Investigations (over o os caf o ava - intect · febre | | 2 - with Subux. 2 6101 -39TC Reguler issit after D.F. Advise 887 for 25, days (Not Valid For Medico Legal Purpose) info@shahhospital.pk 0333 9108776

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OFFICE ORDER NO 2023 BY DATED PESHAWAR THE Dr. MOHSIN FAROQUE CHIEF CONSERVATOR WILDLIFE KHYBER PAKHTUNKHWA **PESHAWAR**

Under consideration is an appeal dated 02-08-2023 preferred by Mr.Saif Ullah Ex-Mali of Peshawar Zoo. The appellant was proceeded under Rule-9 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011 by imposing the major penalty of "Removal from Service" through Director/Conservator Wildlife Peshawar Zoo. Peshawar vide office order No.03, dated 21-07-2023 for the charges of willful absence from duty.

The appeal of Mr.Saif Ullah Ex-Mali was sent to Director/Conservator Wildlife Peshawar Zoo vide this office letter No.1047/WL(E), dated 03-08-2023 for comments. Director/Conservator Wildlife Peshawar Zoo furnished his comments vide letter No.476/P-Zoo. dated 29-08-2023, whereby he concluded as under:

> "He never performed his duty satisfactorily. He habitually remained absent from duty. He was warned many times to perform his duty strictly but in vain. He was called many explanations from Admn: Officer Peshawar Zoo and 15 days notice published in the newspaper for joining his duty before issuing of termination order but he did not respond. Resultantly, he was terminated from government service vide office order No.03, dated 21-07-2023 under Rule-09 of Khyber Pakhtunkhwa Government Servants Discipline) Rules, 2011".

On receipt of the above comments, Mr. Saif Ullah Ex-Mali was given an opportunity of personal hearing on 28-09-2023 for explaining his position. He was given a questionnaire. However, it was noted that he intentionally responded every question with false statement. It is evident from the record that he was admitted to a Drugs Rehabilitation Centre for being engaged in the use of illegal drugs including ICE during his employment in Peshawar Zoo. Thus for maintaining the integrity and safety of Peshawar Zoo and wellbeing of visitors and other stakeholders, his retention in Peshawar Zoo is harmful. Thus, I hereby reject his appeal for re-instatement in service on the following grounds that:

> the Wildlife Department has been formally declared as Wildlife Force and there is no possibility to keep such illegal drugs addict near the para professional officials, Animal Keepers and other support staff,

he was recruited in Peshawar Zoo where thousands of visitors especially children and ladies come on daily basis. His illegal drugs addition habit may compromise the safety and wellbeing of Peshawar Zoo visitors especially minors,

his presence in these circumstances poses significant risks to the safety and productivity of the zoo assets and different stakeholders of Peshawar Zoo including contractors, service providers, security staff etc.

Based on the above factual position and exercising the powers under Rule-17 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the undersigned reject the appeal of Mr Saif Ullah Ex-Mali (BPS-03), of Peshawar Zoo and uphold the major penalty of "Removal from Service" upon him from the date he has been awarded penalty.

> (Dr.Mohsin Farooque) Chief Conservator Wildlife Khyber Pakhtunkhwa Peshawar

16.2<u>783-84</u> MUB-X-08

Copy for information and necessary action forwarded to the :

Director/Conservator Wildlife Peshawar Zoo with reference to letter No.476/P-Zoo,

Mr. Saif Ullah Ex-Mali of Peshawar Zoo with reference to his appeal dated 02-08-2023.

06/10/23 Chief Conservator Wildlife Khyber Pakhtunkhwa

Peshawar

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OFFICE OF THE CHIEF CONSERVATOR WILDLIFE KHYBER PAKHTUNKHWA PESHAWAR

The Director / Conservator Wildlife Peshawar Zoo Peshawar

No/047 WL (E)

dated Peshawar the 03 -08-2023

Subject APPEAL FOR REINSTATEMENT IN SERVICE

Please find enclosed herewith appeal preferred by dated 21-07-2023 regarding termination of his service. You are requested to submit your comments in the matter for further processing.

Encl Attached

Chief Conservator Wildlife Khyber Rakhtunkhwa Peshawar

ACTUANT



OFFICE OF THE DIRECTOR/CONSERVATOR WILDLIFE, PESHAWAR ZOO PESHAWAR

Main Palosi Road Rahatabad, Opposite Pakistan Forest Institute, Peshawar, Phone: 091-7256677

Email: zoopeshawar@gmail.com



No.

674

/P-Zoo

Dated:

08

2023

To

Mr. Saif Ullah

Ex-Mali, Peshawar Zoo

Address: Mohallah Mandori Urmar Payan, Peshawar

Subject:

APPEAL FOR RE-INSTATEMENT IN SERVICE

In compliance of the Chief Conservator Wildlife Khyber Pakhtunkhwa Peshawar letter No. 2141/WL/E dated 15-09-2023, you are directed to attend the office of Chief Conservator Wildlife Khyber Pakhtunkhwa Peshawar Shami Road, Peshawar for personal hearing on 28-09-2023 at 10:00hrs alongwith all record pertaining to the appeal for defense, if any.

Director/Conservator Wildlife
Peshawar Zoo, Peshawar

No._____/P-Zoo

Copy forwarded to Chief Conservator Wildlife Khyber Pakhtunkhwa Peshawar with reference to his letter No. 2141/WL/E dated 15-09-2023 for information, please.

Director/Conservator Wildlife Peshawar Zoo, Peshawar

PD, (16)

سوال نامه بابت الكوائرى برايع سيف الله وسابقه مالى يرياكم يشاور

بمور خه: 28 متبر 2023

سوال کی تفصیل	F. ha	سوال نمير
ن آپ نے اپنی قرائش مسین بھی بھی تھی تھی تا اسلوبی کے ساتھ کئی میمائے ، لیانیا ہے ؟	: فاتريك يثاور أيكه مطالا	_1
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او کی اشتہار یا و ٹس حیب چکاہے؟		-3
عامیں توں انہی نے انہا کہ صبرے فاوی 100) ما درکس عصب فیط ہے	-	المياء
ثبات بنر لے توکیا آپ نے اُس اوٹس کاجواب دیا کہ نہیں؟		-5
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Alcoholin .		

سوال کی تفصیل سوال تمتر كياآب يخلاف تمام قانوني جاره جولى كُلُى تقى جسكى بنياد پر آپ كونوكرى سے برخاست كيا كيا؟ 2 660 de 6 19 6 Code com Color de Co صره برفاون مقسرة عمران في سا بوم قعد سيرس ععد طري فام الدي عدد صیا کال در فلیل واج میں لئی میں بی در سکوبی میں کا کے ا مور خد اگست 2023 کے اپیل کے مطابق آپ حادثہ کے بعد نشہ آور دوائی استعال کرتے ہیں۔ کیا یہ بی ہے؟ مع رسى فولك درست بعد كم دورال المولي من ربيب في المرك المالي المالية صر أرام أن لق صور وفي ے روا من اور در 3 3 اول 2023 کے مطابق سے استان الله اور کو کا کیا تھ تھا جس وجرہے آپ نشات کے عادی ہو گئے جمکی وجہ سے آپ کو علاج کیلئے سپتال میں داخل کروایا گیا۔ آپ کااس جوالے سے کیاموقف ها المرق مع مع و معرا تعلق وقعم فلولوكول مع لهما لفي عين معاصري و بعقما ي عمري وملركا النونس ها بعب والرصار كاستريق العراس ي نشك في نينا د مر بكور سوكا لمرس من الكري من كا ا ہیتال فَاربُورٹس کے مطابق آپ گزشتہ 9سال سے مخلف قشم کے منشات استعال کررہے ہیں جبکہ آپ کاموقف ہے کہ آپ جادثے کے بعد نشد آور دوان استعال کررہے ہیں۔ یہ دونوں چیزیں ایک دوسرے سے مکمل طور پر متفاد مراسیوں میں سے کہ آپ جادثے کے بعد نشد آور دوان استعال کررہے ہیں۔ یہ دونوں چیزیں ایک دوسرے سے مکمل طور پر متفاد مراسیوں میں ہے۔ آپ اس حوالے سے کیادضاحت دینگے؟ المن ويت رفن يع ته صيت ل من عن في ما في دامل المن الله من الله

AUNT

