

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 646/2016

Date of Institution... 03.06.2016

Date of decision... 17.04.2018

Mr. Masaz Khan, Ex-Constable (E&T), O/O the Excise & Taxation Officer
District Kohistan. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Excise and
Taxation Department, Khyber Pakhtunkhwa Peshawar and two others.
.....(Respondents)

MR. Noor Muhammad Khattak Advocate

... For appellant.

MR. Usman Ghani,
District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN, ...
MR. MUHAMMAD HAMID MUGHAL, ...

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 27.01.2014 due to his
absence against which he filed departmental appeal on 07.03.2016 which was
rejected on 09.05.2016 thereafter, he filed the present service appeal on
03.06.2016.

ARGUMENTS

3. The Learned counsel for the appellant argued that the appellant was not in the knowledge of impugned order that is why he filed departmental appeal after almost two years. That even if he was in the knowledge, no limitation would run against the impugned order as the same was a void order for the reason that it was given retrospective effect. That in view of judgment of this Tribunal in a judgment dated 02.03.2018 decided by the larger bench in a case entitled "*Raheemud Din Vs. I.G.P and two others*" the retrospective orders had been held to be void orders and it was also held that no limitation would run against this void order. Further argued that the present proceedings were initiated and culminated under Rule-9 of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules 2011 by an incompetent authority. That the proceedings under Rule-9 of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules 2011 could be initiated by issuing notice by the competent authority as defined in Rule 2-(f) of the rules mentioned above. That the initiation of proceedings by incompetent authority would have no legal effect. He further argued that before his absence the appellant was proceeded under Efficiency & Disciplinary Rules for some other charge and inquiry was also held in that very charge. But instead of taking that inquiry to its logical end the department resorted to Rule-9 mentioned above which was not proper.

4. On the other hand the learned District Attorney argued that the impugned order of removal was passed by the competent authority and it made no difference if the notices were issued by an incompetent authority. That the appellant had

himself admitted his absence in the appeal and now he could not get the relief on the basis of technicalities.

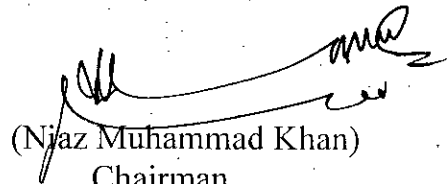
CONCLUSION

6. It is settled principle of Administrative Law that the disciplinary proceedings under prevalent disciplinary rules ought to be initiated and culminated by the competent authority. The competent authority has been defined in Rule-2(f) of the Disciplinary Rules of 2011 mentioned above which is the appointing authority. Under Rule-5 of the said rules it is the competent authority only which can initiate disciplinary proceedings. Similarly the disciplinary proceedings can be initiated under Rule-9 by the competent authority. The words "Competent Authority" have specifically been used in Rule-9 with reference to issuance of notice. But admittedly the notice has been issued not by the competent authority. Similarly the advertisements in the newspapers have also not been published by the competent authority. Only final order has been passed by the competent authority. When some disciplinary proceedings are not initiated by the competent authority then under the principle of *coram non judice* the whole proceedings would be vitiated. In this respect reliance is placed on (2011 SCMR) 1189, PLJ 2004 Tr.C 39 and 1993 PLC (C.S) 153. This Tribunal does not deem it proper to discuss the outcome of already pending inquiry against the appellant before the initiation of proceedings under Rule-9. Consequently the present appeal is accepted. The appellant is reinstated in service. The intervening and absence period shall be treated as leave without pay. The department is however at liberty

to hold denovo proceedings within a period of 90 days. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Hamid Mughal)
Member





(Nijaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED
17.04.2018.

19.12.2017

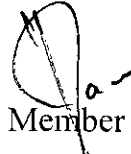
None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present. Notice be issued to appellant and his counsel for attendance for 21.02.2018 before D.B at Camp Court Abbottabad.


(Gul Zohar Khan)
Member (Executive)
Camp Court Abbottabad


(Muhammad Amin Khan Kundi)
Member (Judicial)
Camp Court Abbottabad

21.02.2018

Appellant in person and Addl. AG alongwith Asif Khan, ATO for the respondents present. Counsel for the appellant has sent an application for adjournment. To come up for arguments on 17.04.2018 before the D.B at camp court, Abbottabad.


Member



Chairman
Camp court, A/Abad.

17.04.2018

Appellant alongwith counsel and Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


Member



Chairman

ANNOUNCED
17.04.2018

646/2016

22.12.2017


Counsel for the appellant and Mr. Asif Iqbal, DDO Kohistan alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 21.06.2017 at camp court, Abbottabad.



Chairman

Camp court, A/Abad

21.06.2017

Appellant present in person and Mr. Muhammad Bilal Deputy District Attorney alongwith Asif Iqbal, ETO Officer for the respondents present. Due to Ramazan-ul-Mubarak, learned counsel for the appellant has not turned up from Peshawar. Appellant requested for adjournment. Adjourned for ~~19-12-2017~~ at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad

29.6.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant was serving as Constable in the Excise & Taxation Department when removed from service vide impugned order dated 27.11.2014 on the allegations of willful absence where-against departmental appeal preferred by the appellant on 07.3.2016 was rejected on 09.5.2016 and hence the instant service appeal on 03.06.2016.

That the prescribed procedure laid down in Rule -9 of Government Servants (E&D) Rules, 2011 was not adhered to and the impugned orders are liable to be set aside.


Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 22.09.2016 before S.B at camp court Abbottabad as the same pertains to territorial limits of Hazara Division.

Appellant Deposited
Security & Process Fee


Chairman

22.09.2016



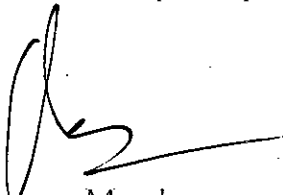
Appellant in person and Mr. Asif Iqbal, ETO alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Requested for adjournment. To come up for written reply/comments on ~~22.12~~ 22.12.2016 before S.B at camp court, Abbottabad.


Chairman
Camp court, A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 646/2016

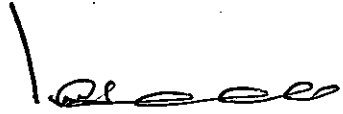
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/06/2016	<p>The appeal of Mr. Masaz Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15-6-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>21-06-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
21	06.2016	<p>Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 29.6.2016.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Masaaz Khan Ex-Constable (E&T) Department Kohistan received to-day i.e. on 03.06.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Anexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 944 /S.T,

Dt. 6/6 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Note:

Sir,

*All objections have been removed
hence re-submitted today dated 14/6/2016.*

14/6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 646 /2016

MASAZ KHAN

VS

GOVT: OF KPK

INDEX

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PETITIONER

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 646 /2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 565

Dated 03-6-2016

Mr. Masaz Khan, Ex-Constable (E&T),
O/O the Excise and Taxation Officer District Kohistan.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director General Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Excise & Taxation Officer, District Kohistan.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORIGINAL IMPUGNED ORDER DATED 27.1.2014 COMMUNICATED TO THE APPELLANT ON 28.2.2016 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 9.5.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REGRETTEED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 27.1.2014 and 9.5.2016 may kindly be set aside and the appellant may kindly be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

That initially the appellant was inducted as constable in the police Department on the proper recommendation of Departmental Selection Committee vide order dated 19.11.1999. That in response the appellant got himself medically examined and started performing his duty as constable quite efficiently and up to the entire satisfaction of his superiors. Copies of the appointment order and medical certificate are attached as annexure **A & B.**

Filed to-day 1-
Registrar
3/6/16

Re-submitted to -day
and filed.

Registrar
14/6/16

- 2- That during service as constable in the police Department the appellant has received many commendation certificates from the authorities on account of his efficiency and commitment to his duty. Copies of the commendations certificates are attached as annexure **C & D.**
- 3- That during service the respondent Department advertised the posts of constables wherein the appellant also applied through proper channel and resultantly after selection process the appellant was appointed as Excise & Taxation Constable vide order dated 23.6.2008. That after appointment the appellant was properly relieved by the Police Department on request of the appellant. Copies of the appointment order, application, relieving order and certificate are attached as annexure **E, F, G & H.**
- 4- That vide Notification dated 21.5.2011 the appellant was allowed by the competent authority to work as assistant sub inspector in the office of respondent No.3 on temporary basis. That on 27.9.2012 the appellant appointment order as Assistant Sub Inspector on acting charge basis was extended on account of excellent record of service. Copies of the orders are attached as annexure **I & J.**
- 5- That due to the traditional situation of Kohistan the appellant was under owe of sixty lacs Rupees (60,00,000/-). That as per the tribal tradition of Kohistan where the defaulter is either killed or fastened with rope till the clearance of defaulted amount. That because of that the appellant leave the country to make the good financial condition in order to clear all outstanding amounts. Copy of the FIR and complaint dated 12.7.2013 are attached as annexure **K & L.**
- 6- That appellant before leaving the country submitted application for leave (EOL) before the respondent No.3 but no response was received from the concerned quarter where after the appellant having no option but leave the Country without obtaining sanctioned leave to save his life.
- 7- That after clearance and acquittal from the above mentioned case the appellant returned to Pakistan where after appellant filed an application for joining his duty but in response he was informed by the concern authority that he has been removed from service. That appellant time and again visited the concerned quarter for issuance of his removal order but in vain. Copy of the application is attached as annexure **M.**

- 8- That lastly after several efforts the respondents issued the impugned order dated 27.1.2014 to appellant on 28.2.2016 whereby he was removed from service on account of willful absence. Copy of the impugned order is attached as annexure **N.**
- 9- That after communication of the said impugned order dated 27.1.2014 appellant preferred Departmental appeal on 7.3.2016 but the same was rejected by the appellate authority on 9.5.2016. Hence the instant appeal on the following grounds amongst the others. Copies of the Departmental appeal and rejection are attached as annexure **O and P.**

GORUNDS:P

- A- That impugned orders dated 27.1.2014 and 9.5.2016 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules in subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation have been served on the appellant before issuing the impugned order dated 27.1.2014.
- D- That no show cause notice has been served on the appellant before issuing the impugned order dated 27.4.2014.
- E- That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 27.1.2014.
- F- That no regular inquiry has been conducted in the matter which is necessary as per Supreme Court Judgments is necessary before issuing any punitive actions against the civil servant.
- G- That no publication has been issued in the leading news papers as per rule 9 of E&D Rules 2011 in the case of appellant by the respondents before issuing the impugned order dated 27.1.2014.

- H- That absence of the appellant is not willful but caused due to the above mentioned reason, that keeping in view his excellent record of service the appellant deserve to be re-instated in to service.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 3.6.2016

APPELLANT



MASAZ KHAN

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

111.000.00

19-11-99

DB NO 181

ATTESTED

Supervisor
Lohis

[Signature]

Dated _____ of Birth 3-10-81 C.A. No. _____

int 5-8-81 chest 33X35 = Auction 104

... will be liable to be terminated at any time with the ...
... is allotted on temporary ... and the ...
... 18-11-99 ... allotted

DASSU DISTRICT Komsiam
Mr. Nasir Khan s/o Karim Khan
Sargu Khal r/o Secu Khal P.S. ...

EXISTENCE ORDER

A-5

B-6

MEDICAL CERTIFICATE.

Name of Candidate Mrs. J. Khan
 Caste of Candidate Saigo Khalil
 Father's Name Karim Dad
 Residence Zaid Khan B. Kamili Tehsil Kohistan
District Kohistan
 Date of Examination 3-10-1981
 Exact height by measurement Height: 5'-8 1/2" Chest: 33" X 22"
 Person's Mark of Identification
 Signature of the Official [Signature]
 Signature of head of office

Seal of Office [Signature]
 Superintendent of
 Kohistan.

I hereby certify that I have examined Mr. Mrs. J. Khan a candidate for
 employment in the Office of the S. P. Kohistan
 and could not discover that he had any disease communicable or other condition
 affecting or bodily infirmity, except nil.

I do not consider this as disqualification for employment in the office of the
S. P. Kohistan. His age according to his own statement 18 years at
 present is about 18 years (Eighteen yrs.)

NICNO

26-81-051009

ME

note N. side mandible

LEFT HAND THUMB AND FINGER
IMPRESSION

[Signature]
 18/10/81
 Medical Superintendent
 Civil Hospital,
 District Kohistan

ATTES TED



[Signature]

ORDER

C-7 continued.

Constable Masaz Khan No. 522 of this district is hereby granted 2 marks for the single handedly arrest of PO Abdur Razaq s/o Arbab r/o Jalkot involved in Case FIR No. 13/05 u/s 302/324/148/149 PPC of Police Station Jalkot.

OR No. 54

DATE: 17 / 04 / 2006

[Signature]
District Police Officer,
DISTRICT KOHISTAN OFFICER,
KOHISTAN

17-4-06

[Signature]
DISTRICT POLICE OFFICER,
KOHISTAN

Bomb Reconnaissance Course

qualified in the Bomb Reconnaissance course

as is stated from 14-4-2008 to 3/5/2008

B.R.
Case No 7.

013 10 66
011 5 08

ATTESTED

[Signature]

Serial No.

CHARGE

14 OF

Continued

14. COMMEMORATORY ENTRIES—Contd.

Granted Acc class III by Shri Krishna Das
for absence during the absence of Shri Das
with cash reward of Rs 200

Superintendent of Police
Kohistan

Grants are class III by DPO Kohistan
of his good performance in arrest of
with cash P.R. No. 73 dated 17/6/2005 Rs 100/-

Rs 1300 Cash Reward Rs 1000

B Bono 142

DT. 14-2-2005

DISTRICT POLICE OFFICER
KOHATA

Grants are class III by DPO Kohistan
of good performance of his during post period DPO

of the R.D.S.P awarded

OBNO 214

DT. 17-10-2005

Cash Reward Rs 1000

ATTESTED

Grants are class III by DPO Kohistan
of his good performance during post period
Cash Reward Rs 2000

OBNO 210

DT. 18-10-05

1-8

14. COMMENDATORY ENTRIES

Sl. No.

(PROFICIENCY COURSE)

9

Qualified in the proficiency course at RSL Peshawar during the Month of April 2004 vide letter no 6877-66/RSL dt 14-5-2004

OB No 114
dt 5-5-2004

1

Superintendent of Police
B Kohistan

Granted all class III by DPO Kohistan for his good meritorious duty during the posting in DPO office.
Cash Reward Rs 200/-

OB No 117
dt 3-5-05

DISTRICT POLICE OFFICER
KOHISTAN

Granted all class III by DPO Kohistan for his good performance of duty arrest of D.O. Abdul Razak vide case PIR NO 13/2005 U/S 302/324/148/148 P.S. Jalilkot
Police H. Sheet NO 430/A.P.O

OB No 3
dt 3-5-06

Cash Reward Rs 200/-

ATTESTED

DISTRICT POLICE OFFICER
KOHISTAN

[Signature]

فوری دستوری

9A

د. پ. ا. 0

لیونٹ سٹریٹ آفیس

ٹاؤن ہال

ڈیپوٹ سٹریٹ

5

سی 9

362.324 13/05
48.149

جس سالک

522
FC

ATTACHED

CC-III

+

Cash Demand

250/-

for CC-III
Cash Demand

DB-3
14.3-1-06

DISRICT INCHARGE
14.3-1-06

Director District
DASSI

تعمیرات کے لیے 13/05/2013
کوٹہ میں 362.324 روپے
48.149 روپے کے لیے
522 روپے کا طلبہ کرے
جوئے بنا یہ کہیں علی سے
سے گنتی بنی بیچ اس
تاریخ کو جمع الاوقات
انہما اور اس وقت تک
حکم صادر کیا جائے

Shah Jalal
20.11.05

E-10

DIRECTORATE GENERAL, EXCISE & TAXATION N-W.F.P. PESHAWAR.

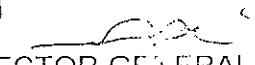
ORDER

Peshawar, dated the 23/06/2008

No. 11170 /Estb/XXXV-D-82. On the recommendation of Departmental Selection Committee, Mr. Masaaz Khan S/o. Karimdad R/o. Zaidkar Seo P.O. Kumaila, Tehsil Dasu, Kohistan is hereby appointed as Excise & Taxation Constable on temporary basis in BPS-5 (Rs.2750-135-6830) with usual allowances as admissible under the rules, with immediate effect, on the terms and conditions mentioned below: -

- i) He will for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, he will be entitled to receive such amount contributed by them towards Contributory Provident Fund (C.P.F) along-with the contributions made by Govt. to their accounts in the said fund, in the prescribed manner.
- ii) He will be governed by the N.W.F.P., Civil Servants Act 1973, all the laws applicable to the Civil Servants and Rules made there-under.
- iii) He will, initially, be on probation for a period of two years extendable for a further period upto one year.
- iv) His services will be liable to termination at any time without assigning any reason thereof before the expiry of the period of probation, if his work during this period is not found satisfactory. In such an event, he will be given a month's notice of termination from service or one month's pay in lieu thereof. In case he wishes to resign at any time, a month's notice shall be necessary or in lieu thereof a month's pay shall be forfeited.
- v) He will produce medical fitness certificate from the Medical Superintendent, Police & Services Hospital, Peshawar, as required under the rules.

2- If the above terms and conditions of appointment are acceptable to him, he should report for duty to the **Excise & Taxation Officer, Kohistan** within 10 days against the existing vacancy.

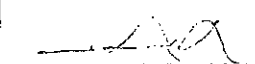

DIRECTOR GENERAL,
EXCISE & TAXATION N-WFP,
PESHAWAR.

No. 1171-75 /Estb./XXXV-D-82. Peshawar, dated the 23/06/2008.
Copy forwarded to:

- 1- PS to Minister Excise & Taxation, N.W.F.P., Peshawar.
- 2- PS to Secretary to Govt. of NWFP, Excise & Taxation Department, Peshawar
- 3- Excise & Taxation Officer, **Kohistan**.
- 4- District Accounts Officer, **Kohistan**.
- 5- Mr. Masaaz Khan S/o. Karimdad R/o. Zaidkar Seo P.O. Kumaila, Tehsil Dasu, Kohistan.

ATTESTED




DIRECTOR GENERAL,
EXCISE & TAXATION N-WFP,
PESHAWAR.

حالی

دود نام گزاش صحیح سانی لوجا لوجا اندر زیا فریاد
ڈارڈ اندر جنرل ایگسٹینڈیشن میں صوبہ سرحد میں
تعمیر ایگسٹینڈیشن میں لکھنؤ میں ہو گیا ہے۔

در لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں
تعمیر ایگسٹینڈیشن میں لکھنؤ میں لکھنؤ میں
تعمیر ایگسٹینڈیشن میں لکھنؤ میں لکھنؤ میں

تعمیر ایگسٹینڈیشن میں لکھنؤ میں لکھنؤ میں

صاواوا 522 کس میں لکھنؤ میں لکھنؤ میں

Siv forwar
Dated
MSP. 10.10
07.07.0

Siv
forwarded

MSP

ASI in Ks Dasm
07.07.2008

H/c
For necessary legal action

ATTESTED

[Signature]

[Signature]

ORDER

9-12

Const. Masood Khan 010522 Relieved
is hereby appointed as Excise & Taxation
Hice Kohistan vide Director General
Excise & Taxation NWFP Peshawar order
no 11171-75/ESTB + H D-23-6

12
07 11 2008
Stamp:
...
...
...
...

Stamp:
...
...
...
...

ATTESTED

[Signature]

ATTESTED

12

DSP Investigation
Chief Investigation Station
Kohistan
11-07-2008

Certified that Mr. Masaz Khan Belt No. 522 S/O Karim Dad has appointed in Police Department on 18-11-1999 as Constable in BPS 5. During his service he performed his duties with zeal and honesty in this Department, Investigation Wing Kohistan.

CERTIFICATE

POLICE DEPARTMENT

KOHISTAN DISTRICT

H-13

DIRECTORATE GENERAL, EXCISE & TAXATION,
KHYBER PAKHTUNKHWA.


Muqaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211232.


14
I-14

ORDER.

Peshawar dated the 21/05/2011.

No. 8976 /Estb/XXXV-D-246. Consequent upon the recommendation of Excise & Taxation Officer-Kohistan and to increase the Revenue and Provincial Own Receipt. Mr. Masaz Khan, Excise & Taxation Constable (BPS-5) Office of Excise & Taxation Officer-Kohistan, is allowed to work as Assistant Sub Inspector in the Office of Excise & Taxation Officer Kohistan, purely on temporary basis, till further orders, for which he shall not claim any seniority and financial benefits, in the interest of public service subject to the condition as laid down in **letter No.SO(Estb)E&T/1-14/2000/791** dated 30-2000.


DIRECTOR
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR


MAN, 2015
ION,
KHYBER PAKHTUNKHWA,

No. 8771-75 / Estb/XXXV-D-246.

Copy forwarded to:-

- 1- PA to Director General, Excise & Taxation, Khyber Pakhtunkhwa, Peshawar.
- 2- Excise & Taxation Officer-Kohistan.
- 3- Excise & Taxation Officer-Abbottabad.
- 4- Office of concerned.
- 5- P.File

ATTESTED




DIRECTOR
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR


MAN, 2015
ION,
KHYBER PAKHTUNKHWA,

OFFICE OF THE DEPUTY DIRECTOR EXCISE & TAXATION (HAZARA REGION),
ABBOTTABAD

J-15
15

Dated, Abbottabad, the 27/10/07 012

ORDER

No. 920 /D.D.H.Es'b To overcome the shortage of staff in the office of Excise & Taxation Officer, Kohistan, Mr. Masaz Khan Excise & Taxation Constable, (BPS-5) is allowed to work as Assistant Sub-Inspector on acting charge basis in the office of the Excise & Taxation Officer, Kohistan, purely on temporary basis, till further orders, for which he shall not claim any seniority and financial benefits, in the interest of public service, subject to the condition as laid down in letter No SO(Estb)E&T/1-76/2000 dated 27th October 2007.

Samir Ahmad
Deputy Director
Excise & Taxation (Hazara Region)
Abbottabad

No. 921-22 D.D.H/Estb

Copy forwarded for information to:

1. Director General, Excise & Taxation Khyber Pakhtunkhwa, Peshawar, for information please.
2. Excise & Taxation Officers, Kohistan.

5

Samir Ahmad
Deputy Director
Excise & Taxation (Hazara Region)
Abbottabad

ATTESTED

[Signature]

[Signature]
Director
Excise & Taxation
Khyber Pakhtunkhwa

KHYBER PAKHTUNKHWA.

Augaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211209.

No. 1386

/Estb

Peshawar dated 12/07/2013.

To

Mr. Ammar Jadoon,
Excise & Taxation Officer,
Torghar.

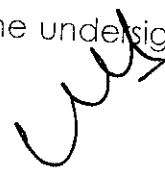
L-17

SUBJECT:-

COMPLAINT.

A complaint filed by one Mr. Asad-ur-Rehman Qureshi S/o Abdu Rehman Qureshi, H.No.361/4, LM, Muslim town, Abbottabad against Mr. Masaz Khan, Excise & Taxation Constable office of Excise & Taxation Officer-Kohistan which is self explanatory and sent herewith.

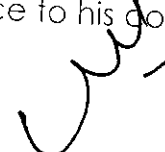
2- In this regard you are hereby nominated as inquiry officer to probe into the matter and submit your fact finding report to the undersigned within (15) days after receipt of this letter.


DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR

No. 1387-90

Copy forwarded to;

- 1- Deputy Director Excise & Taxation Hazara Region at Abbottabad.
- 2- Excise & Taxation Officer-Kohistan for information and with the direction to keep proper watch on the said official in future.
- 3- Mr. Masaz Khan, Excise & Taxation Constable O/o ETO-Kohistan.
- 4- Mr. Asad-ur-Rehman Qureshi S/o Abdul Rehman Qureshi, H.No.361/4, LM, Muslim town, Abbottabad for information with reference to his complaint dated 10-07-2013.


DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR

ATTACHED



The Honour of

Dated: 16/4/2014

Director General Excise Taxation K.P.K Peshawar

Respected Sir,

M-18

With great reverence, it is submitted for your kind consideration sympathetically under the humanity basis that the applicant have been completed 6 years in the Department of Excise Taxation in the capacity of Constable and in the entire service I have been maintained very good record of service and having clean conduct sheet of service. I often remained/ appointed in KOHISTANI where majority staff belongs to Abbottabad Mansehra whose hardly see the office once in a year, due to which I was remitting the staff salaries through their accounts.

Sir, it is worth mentioning here and would like to introduce myself briefly that due to well performance of my duty the Minister of Excise promoted me temporary as ASI, whereas later on due to exciting of ETO Mr. Ammar I have been demoted from my temporary rank of ASI.

Sir, about 4 months ago due to the traditional situation of Kohistan I was under owe of Sixty Lacs Rupees (Rs. 60,00,000/-), due to these unavoidable circumstances I was compelled to leave the country for two years for the purposes to make good the financial condition. So as keeping in view the above I submitted an application for grant of leave , but the ETO Ammar intentionally blocked in the way and my application did not reach to your kind honour table, resulting deprived from my rights under the law.

As I was under pressure of heavy loan amount, that's why there was no any other alternative way with exception of to leave the country for abroad, and in this connection I also sent an application to the D.G Office which is available in my personal file. Any how due to the worst situation faced to me, I left the country and left my family consisting one wife and 5 children on the bless of Allah Almighty and in the supporting of my limited salaries. But it is said with great concern that ETO AMMAR continuously cutting my legs and at last unfairness dismissed my service and my innocent family have been deprived from this livelihood.

Your kind honour is therefore humbly requesting to kindly take appropriate steps and consider my request under the humanity basis and I may please be appointed on my own post of constable with granting me the two years leave. Your this kindness shall be highly obliged.

Thanks,
Yours faithfully,

MASAZ KHAN

At presnt: U.A.E.

Mobile: 0971 52 6798407

Director

Copy forwarded to:-

- 1- Minister of Excise Taxation K.P.K Peshawar
- 2- Secretary Excise Taxation K.P.K Peshawar

ATTESTED

for original
Supdt. I 21/4

21/4/14



DIRECTORATE GENERAL, EXCISE & TAXATION,
KHYBER PAKHTUNKHWA.

Augaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211209.


Peshawar dated the 27 /01/2014. N 19

ORDER.

No. 5040- /Estb/XXXV-D-82. Whereas, Mr. Masaz Khan, Excise and Taxation Constable, Office of the Excise and Taxation Officer, Kohistan is continuously absent from his official duties w.e.f. 16.08.2013 without any prior approval of the Competent Authority as reported by the Excise and Taxation Officer, Kohistan and Deputy Director, Excise and Taxation Hazara Region.

And whereas, the procedure in case of willful absence under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, have duly been concluded and whereabouts of the official are still not known.

In view of the above facts, I, Javed Marwat, Director General Excise and Taxation Khyber Pakhtunkhwa, as Competent Authority, in exercise of powers under Rule-9 read with Rule 4(b)(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby impose the major penalty of removal from service upon Mr. Masaz Khan Excise and Taxation Constable, Office of the Excise and Taxation Officer, Kohistan with effect from 16.08.2013.


DIRECTOR GENERAL
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR.


No. 5041-46 /Estb/XXXV-D-82.

Copy forwarded for information & further n/a to:-

1. Accountant General, Fort Road, Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer, Kohistan.
3. Excise and Taxation Officer, Kohistan. The salaries of the official w.e.f. 16.08.2013, if transferred to his bank account are illegal and he is directed to freeze all his service benefits till the recovery of the salaries paid, under intimation to this Office. He is further directed to get the copy of this order delivered to the official in the prescribed manner and a copy of the receipt/acknowledgement be sent back to this office for record.
4. Deputy Director Excise and Taxation, Hazara Region w/r to his letter No. 1581-84/DDH, dated. 17.01.2014.
5. Mr. Masaz Khan s/o Kalimuddin r/o Zaidkar Seo PC Kornalla, Tehsil-Dasu, Kohistan.
6. Personal file of official.

ATTESTED




DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR.

To

The Hon'ble Secretary
Excise & Taxation Govt. of
Khyber Pakhtunkhwa, Peshawar.

NO

625
07/03/2016

0-20

Subject: Departmental Appeal against Ex-Parte removal from Service order no. 5040/Estb/XXXV-D-82, dated 27-01-2014 passed by the Director General Excise & Taxation, Peshawar.

Respected Sir,

With profound respect, I beg to submit few lines against the ex-parte order of termination from service which had not neither been served nor received by the applicant and the instant Appeal has been preferred for your kind sympathetic consideration:-

1. That appellant joined the Police Service as a Constable in the year 1999 and through proper channel he was appointed as an Excise Constable from the District Kohistan in the year 2008.
2. That appellant was serving as a Constable in the office of Excise & Taxation Kohistan till August, 2013 without any complaint from the superior officers, when majority of the staff hardly see the office. That due to excellent performance he was promoted to the rank of ASI on officiating basis by then Minister Excise & Taxation the only official available in the Office.
3. That the Government of Pakistan in the August launched amnesty Scheme in which petitioner brought vehicles for the purpose of registration in order to enhance revenue of Excise Department. However, he sustained huge loose, on account of which an FIR was got registered him. (Copy of FIR is Annex).
4. That as per the tribal tradition of Kohistan where the defaulter is either killed or fastened with rope till the clearance of the defaulted amount. Appellant leave the Country due to un-avoidable circumstance to make good the financial conditions in order to clear all outstanding amount, however, he submitted an application to the then ETO concerned for onward processing to the Directorate of Excise & Taxation but unfortunately due to personal grudges he did not process my long leave application.
5. That due to heavy lean and fear of death, there was no alternative but to leave the Country in emergency situation (Copy of the tourist Visas is hereby enclosed) and in my absence an enquiry was held in which I was found guilty of absent from Duty and thus a major penalty of Removal from Service has been imposed upon me under 4(b) (iii) of Khyber Pakhtunkhwa Government Servants (E & D) Rules, 2011.

ATTESTED



6. That the Appellant through the instant Appeal, beg to sympathetic consideration and prayed for setting-aside the ex-parte termination order on the following grounds:-

(21)

GROUNDS:-

- A. That under the E & D rules, 2011, no proper enquiry has been conducted to prove charges against me.
- B. That the entire disciplinary proceedings culminated into "removal of Service" on account of absenteeism is illegal and blatant violation of the Efficiency & Disciplinary Rules, 2011 and the law lay down by the superior courts from time to time.
- C. That, no proper procedure has been followed by the enquiry officer and the entire enquiry has been conducted at my back.
- D. That no explanation and Show Cause had been served over the appellant and so called publication of Show Cause Notice in the News Paper, which had no circulation at all at Kohistan District beside people at Kohistan does not understand and read Urdu properly due to illiteracy.
- E. That the enquiry was initiated when the then ETO did not forward his long leave application, otherwise, there would be no occasion for major penalty.
- F. That, even in the show cause notice not served on the appellant, there is no specific date mentioned on the allegation of absenteeism.
- G. That, the enquiry officer did not bother to go through the District Kohistan and failed to record statement of witness, in order to ascertain the actual reason of absence.
- H. That the enquiry officer failed to place on record any single documentary proof of my absence from duty nor bother to record statement of any officials to establish charges against me.
- I. That the appellant was condemned un-heard during the enquiry proceeding.
- J. That my spotless carrier in service and the way major penalty imposed upon me is very harsh and liable to be set-aside.

It is therefore most humbly requested that on acceptance of the instant Departmental Appeal, the impugned order of Removal from Service" may graciously be set-aside on sympathetic consideration as the appellant is the father of five starving children.

Yours Sincerely,

(Masaz Khan)

Constable Excise & Taxation District, Kohistan

Cell No. 03405040122.

ATTESTED



**MOST IMMEDIATE/
OUT TODAY**



**GOVERNMENT OF KHYBER PAKHTUNKHWA
EXCISE, TAXATION AND NARCOTICS CONTROL
DEPARTMENT**

No. SO (Lit:)/E&T/Masaz Khan /4-379/2016/2418-17
Dated Peshawar the 09.05.2016

To

Mr. Masaz Khan,
Ex-Constable, ETO Office,
Kohistan.

**Subject: DEPARTMENTAL APPEAL AGAINST EX-PARTE REMOVAL FROM
SERVICE ORDER NO. 5040/ESTB/XXXV-D-82, DATED 27.01.2014
PASSED BY THE DIRECTOR GENERAL EXCISE & TAXATION,
PESHAWAR.**

Please refer your departmental appeal dated 07.03.2016 and to inform you that the competent authority looked into your appeal and rejected being time barred.


(Malik Muhammad Ali)
Section Officer (Litigation)

Endst. No. & date even.

Copy is forwarded to:-

1. Director General, Excise, Taxation and Narcotics Control, Khyber Pakhtunkhwa.
2. PS to Secretary, Excise, Taxation and Narcotics Control Department, Khyber Pakhtunkhwa.

Section Officer (Litigation)

ATTESTED



VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar
OF 2016

Masaz Khan (APPELLANT)
(PLAINTIFF)
(PETITIONER)

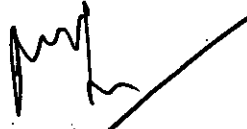
VERSUS

Govt. of KPK (RESPONDENT)
(DEFENDANT)

I/We Masaz Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2016



CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No 0345-0283141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, ABBOTTABAD BENCH**

Service Appeal No. 646/2016.

Mr. Masaz Khan, Ex-Constable (E&T), O/o the Excise and Taxation Officer
District Kohistan.

(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary, Excise & Taxation Department Khyber Pakhtunkhwa, Peshawar.
2. Director General Excise, Directorate of Excise, Taxation and Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.
3. The Excise and Taxation Officer, District Kohistan.

(Respondents)

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORIGINAL
IMPUGNED ORDER DATED. 27.1.2014, COMMUNICATED TO THE
APPELLANT ON 28.2.2016 WHEREBY MAJOR PENALTY OF
REMOVAL FROM SERVICE WAS IMPOSED ON THE APPELLANT
AND AGAINST THE APPELLATE ORDER DATED 9.5.2016 THEREBY
THE DEPARTMENT AL APPEAL OF THE APPELLANT HAS BEEN
REGRETTEED ON NO GOOD GROUNDS.**

REPLY ON BEHALF OF RESPONDENTS NO. 1-3

Respectfully Sheweth.

Preliminary objections.

1. That, the appellant has no cause of action.
2. That, the appellant has no locus standi.
3. That, the appellant has not come to Tribunal with clean hand.
4. That, the appellant has been estopped by his own conduct to file the appeal in hand.

FACT.

1. Para-1, Needs no Comments.
2. Para-2, Needs no Comments.
3. Para-3, pertain to record.

4. The appellant was allowed to work as Assistant Sub-Inspector only to overcome the shortage of staff and increase the revenue and receipts.
5. Para-5 is misleading as FIR u/s 489F of the PPC was lodged against the appellant due to dishonestly issuing a cheque. That has got nothing to do with the traditional situation of Kohistan. It was due to his own misconduct that implicated him in the FIR. **(Copy of letter No.5549/Estb:, dated. 14.04.2016 narrating the whole episode, addressed to the Section Officer (Litigation) Excise, Taxation and Narcotics Control, Khyber Pakhtunkhwa is enclosed as Annexure-"A")**.
6. Para-6, is incorrect. There is no such application on record submitted by appellant.
7. Para-7, is untrue. He remained well informed about all the process throughout and deliberately rather willfully remained at large in order to avoid and defeat the inquiry proceedings against him.
8. Same as Para-7 above. The disciplinary action was taken against the appellant under the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011 after observation of due process of law.
9. The appeal of the appellant was rejected being devoid of merits.

G R O U N D S.

- A. Incorrect, all action against the appellant was due to his own misdeed and due process of law was observed. So the impugned order are in accordance with law.
- B. Incorrect, as explained as Para-A above.
- C. There is no need of issuing charge sheet and statement of allegation in the case of willful absence from official duties. Rules 9 of Efficiency & Disciplinary Rules lays down explicit procedure to be followed in the event of willful absence by a Civil Servant. **(Copy of Rules 9 Efficiency and Disciplinary Rules, 2011 is as Annexure-"B")**
- D. Incorrect proper procedure under Rules 9 were fulfilled.
- E. Incorrect, notices were served on his home address, but as he states that he was in Dubai, so how he could have been accessed.

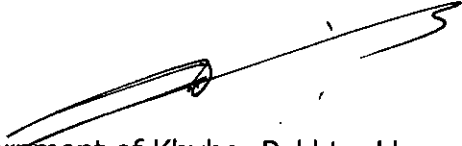
F. Incorrect as per paras above.

G. Incorrect as per paras above. **(Copies of the publications in newspapers are as annexure- "C" & "D")**

H. Incorrect. The reason stated by the appellant is misleading and false for reasons detailed in letter referred in Para-5 (annexure-"A").


I. Needs no comments.

In view of the above it is prayed that the departmental appeal of the appellant is meritless and he is estopped from seeking remedy due to his own conduct. As such the instant appeal is only a poor attempt to mislead the honorable Tribunal. It is nothing except wastage of time, efforts and precious resources of the Government. Therefore, the instant appeal may be dismissed with costs.

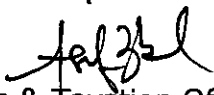


Government of Khyber Pakhtunkhwa
through Secretary Excise & Taxation
Department.

(Respondent No. 1)



Director General,
Excise & Taxation
Khyber Pakhtunkhwa
(Respondent No. 2)



Excise & Taxation Officer
Kohistan.
(Respondent No. 3)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, ABBOTTABAD BENCH**

Service Appeal No. 646/2016.

Mr. Masaz Khan, Ex-Constable (E&T), O/o the Excise and Taxation Officer
District Kohistan.

(Appellant)

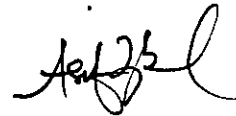
VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary, Excise & Taxation Department Khyber Pakhtunkhwa, Peshawar.
2. Director General Excise, Directorate of Excise, Taxation and Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.
3. The Excise and Taxation Officer, District Kohistan.

(Respondents)

AFFIDAVIT

I, **Asif Iqbal** Excise and Taxation Officer Kohistan, do hereby solemnly affirm and verify on oath that the contents of accompanying "**Para Wise Reply**" are true and correct to the best of my knowledge and belief, and nothing has been kept concealed or misstated.



THE DEPONENT.

CNIC #

DIRECTORATE GENERAL EXCISE, TAXATION AND
NARCOTICS CONTROL, KHYBER PAKHTUNKHWA.

Auqaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211209.

93

No. 5549 /Estb: Dated Peshawar the 14/04/2016

To:
The Section Officer (Litigation),
Government of Khyber Pakhtunkhwa,
Excise, Taxation & Narcotics Control Department,
Peshawar.

Subject DEPARTMENTAL APPEAL AGAINST EX-PARTE REMOVAL FROM SERVICE ORDER NO. 5040/ESTB/XXXV-D-82, DATED. 27.01.2014 PASSED BY THE DIRECTOR GENERAL EXCISE AND TAXATION PESHAWAR.

Kindly refer to your letter No. SO (Lit:)/E&T/Masaz Khan /4-379/2016/1661-62, dated. 21.03.2016 regarding the subject matter.

2- As per this Office record, departmental proceedings against the official Mr. Masaz Khan, ex-E&T Constable, office of the Excise and Taxation Officer, Kohistan were initiated vide this Office No. 1386/Estb, dated. 12.07.2013 as a result of complaint filed by one Mr. Asad ur Rehman Quereshi s/o Abdul Rehman Quereshi r/o H. No. 361/4, LM, Muslim Town Abbottabad regarding transfer of ownership of vehicle No. B-1877 (Kohistan) and Mr. Ammar Jadoon, the then Excise and Taxation Officer, Torghar was nominated as Inquiry Officer. (Copy of complaint and nomination of inquiry officer are enclosed as Annexure-I and Annexure-II respectively).

3- The Inquiry Officer vide his letter No. 54/E&T, dated. 05.08.2013 found Mr. Masaz negligent and recorded in his recommendation that if Mr. Masaz fails to produce the registration book of complainant within two(02) weeks time strict disciplinary action is recommended. (Copy enclosed as Annexure-III)

4- Meanwhile, Mr. Masaz Khan filed an application before the then Director General Excise and Taxation Khyber Pakhtunkhwa and while defending himself accused KPO for receiving the file from EHA Office Peshawar. However, the record fetched from EHA Office revealed that it was Mr. Masaz Khan who received the file etc. Mr. Masaz further accused the Abbottabad and Mansehra staff for their excessive behavior and requested re-inquiry through the persons of his choice i.e., Mr. Sabz Ali or Mr. Irfan Mushtaq ETOs. (Copy of his application and receipt of EHA Peshawar with signature of Mr. Masaz Khan are enclosed as Annexure-IV and Annexure-V respectively).

5- His request was acceded to and Mr. Sabz Ali Khan, ETO, Haripur was notified as inquiry Officer to re-inquire the matter and put up recommendation vide this Office Order No. 1668/Estb/P.File, dated. 09.09.2013 with a copy endorsed to Mr. Masaz Khan. (Copy of Order of re-inquiry enclosed as Annexure-VI).

6- On 16.09.2013 the previous Inquiry Officer Mr. Ammar Khan Jadoon, ETO Kohistan again vide his letter NO. 62 E&T Kohistan reported that he was proved to be guilty and highly irresponsible

Estb:II



DIRECTORATE GENERAL EXCISE, TAXATION AND
NARCOTICS CONTROL, KHYBER PAKHTUNKHWA.

Auqaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211209.

94

in conducting official affairs. So it was suggested that disciplinary action may be taken against Mr. Masaz Khan according to the E&D rules. (Copy of the letter under reference enclosed as Annexure-VII).

7- On 03.10.2013 Mr. Sabz Ali Khan ETO Haripur was required vide this Office No. 2461 to expedite Inquiry report as the same still remained pending despite the lapse of 21 days. (Copy enclosed as Annexure-VIII).

8- On 10.10.2013 the ETO Kohistan vide his letter No. 293/E&T reported to the Deputy Director E&T Hazara Region Abbottabad with a copy endorsed to the undersigned that the Government Vehicle was found missing and on inquiring from the staff he was told that the vehicle is in the custody of Mr. Masaz Khan who is not coming to the office for the last two or three months. Accordingly he found it his duty to report and seek advice and guidance. (Copy of ETO Kohistan letter under reference is enclosed as Annexure-IX).

9- Further to the above, the Deputy Director, E&T Hazara Region vide his letter No. 1278/1/DDH, dated. 11.10.2013 reported that Mr. Masaz Khan has been misusing the official vehicle Potohar Jeep and as per report of the ETO concerned the official has been absent from duty since long. His available mobile Nos. are switched off and thus his whereabouts are untraceable. The Deputy Director, E&T Hazara Region requested that necessary guidance may kindly be provided. (Copy of Deputy Director E&T Hazara Region letter is enclosed as Annexure-X).

10- On 25.10.2013 the Inquiry Officer Mr. Sabz Ali Khan, Excise and Taxation Officer Haripur vide his letter No. 2515 sent Inquiry report that Mr. Masaz Khan constable was summoned again and again on telephonic calls but no whereabouts were traced out. He also contacted ETO Kohistan to inform Mr. Masaz on any available means to attend the office of the inquiry Officer for recording his statement. However, the concerned ETO informed the IO that Mr. Masaz is absent from duty since September 2013 and also has taken away official jeep of Excise and Taxation Officer alongwith Kalashnikov Rifle and no whereabouts of his presence traced even from his home/village. In the concluding Para of the Inquiry report, the Inquiry Officer was of the considered opinion that Mr. Masaz constable has committed misconduct besides that he brought bad name to the department and may be awarded penalty as per Rules. (Copy of Inquiry Report is enclosed as Annexure-XI).

11- On 31.10.2013 Deputy Director E&T Hazara Region vide his letter No. 1315-17/DDH reported that the vehicle alongwith the weapon has been recovered. (Copy of Report is enclosed as Annexure-XII).

12- In this connection explanation of the ETO Kohistan was called vide this Office No. 2763/Estb/XXXV-D-5, dated. 22.10.2013 as to why action for absence of the official as well as missing of vehicle and weapon was not taken. (Copy of explanation is enclosed as Annexure-XIII)

13- Further to the preceding Para-12 reference, the ETO Kohistan, vide his letter No. 298, dated. 29.10.2013 explained his position. (Copy of reply to explanation is enclosed as Annexure-XIV)

**DIRECTORATE GENERAL EXCISE, TAXATION AND
NARCOTICS CONTROL, KHYBER PAKHTUNKHWA.**

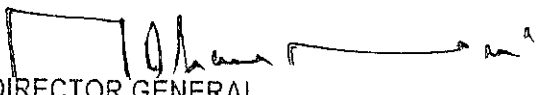
Auqaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211209.

14- On 17.01.2014, the Deputy Director Excise and Taxation, Hazara Region vide his letter No. 1581-84/DDH reported the initiation of process against the official which included explanations and publication of newspaper proclamations. (Copies of letter under reference, explanation No. 241-B/E&T, dated. 16.08.2013, explanation No. 291-92/E&T, dated. 08.10.2013, Notice under Rule-9 vide No. 1379-81/DDH, dated. 29.11.2013, letter No. 1472/DDH, dated. 18.12.2013 addressed to DD Regional Information Office Abbottabad for publication of notice, and publication of newspaper proclamation in Daily Aaj and Daily Mohasib, dated. 24.12.2013 are enclosed as Annexure-XV to Annexure- XXI)

15- In view of the above process, major penalty of removal from service was imposed upon the official by the competent authority vide order No. 5040/Estb/XXXV-D-82, dated. 27.01.2014. (Copy of order is enclosed as Annexure-XXII).

16- After conclusion of the codal formalities, lastly, an application was received in this directorate 21.04.2014 from the official mentioning his address as UAE with mobile phone number 00971526798407 addressed to the Director General, Excise and Taxation, Khyber Pakhtunkhwa with copies endorsed to the Honorable Minister, Excise and Taxation, Khyber Pakhtunkhwa and Worthy Secretary, Excise and Taxation Khyber Pakhtunkhwa requesting appointment on his own post of constable granting him two(02) years leave. (Copy of his application is enclosed as Annexure-XXIII).

17- In response thereto an SMS message was sent to the mobile number specified in his application referred in Para 16 above informing him that the competent authority to go in appeal is the higher authority. (Copy of SMS message dated. 07.05.2014 is enclosed as Annexure-XXIV).


DIRECTOR GENERAL,
EXCISE, TAXATION & NARCOTICS CONTROL,
KHYBER PAKHTUNKHWA, PESHAWAR.

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

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

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

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

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

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

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

شوکار نوٹس / نوٹس طویل غیر حاضری



آپ مسمی مساز خان ولد کریم داد کانسٹیبل ایکسائز اینڈ ٹیکسیشن آف دی ایکسائز اینڈ ٹیکسیشن آفیسر کوہستان ، بغیر کسی چھٹی وغیرہ کے اذ 2013 سے مستقل غیر حاضر ہیں اس سلسلے میں آپ کے گھر کے پتہ پر اور ڈیوٹی سٹیشن کو ETO کوہستان کی طرف سے کئی مراسلے (Explanations) بھیجے گئے تاحال آپ کی طرف سے کوئی جواب دفتر مذکورہ کو موصول نہیں ہوا۔ آپ کے ذ انکوائری بھی کی گئی مگر آپ انکوائری آفیسر کے سامنے بھی پیش نہیں ہوئے۔ آپ کو دفتر کے بحوالہ نمبری 81-1379 بتاریخ 29 نومبر 2013 کو سات دن کے اندر اندر اپنی ڈیوٹی پر حاضر ہونے کی تاکید کی گئی اور جو آپ کے گھر کے پتہ پر رجسٹری بھی کی گئی تھی لا آپ کو آخری بار بذریعہ نوٹس ہذا مطلع کیا جاتا ہے کہ اس اشتعار کے چھپنے کے بعد پندرہ دن کے اندر اندر اپنی ڈیوٹی پر حاضری یقینی بنائیں اور طویل غیر حاضری کی وجہ بھی بیان کریں بصورت دیگر آپ کے خلاف (خیر پختونخواہ کارکردگی و نظم و ضبط کے قانون) 2011 کے مطابق یکطرفہ کارروائی کی جائے گی، اور آپ کو نوکری سے برخاست ہم کیا جاسکتا ہے۔

ریجنل ڈپٹی ڈائریکٹر ایکسائز اینڈ ٹیکسیشن

ہزارہ راجن، ایبٹ آباد، خیبر پختونخواہ

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, ABBOTTABAD BENCH**

Service Appeal No. 646/2016.

Mr. Masaz Khan, Ex-Constable (E&T), O/o the Excise and Taxation Officer
District Kohistan.

(Appellant)

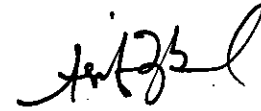
VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary, Excise & Taxation Department Khyber Pakhtunkhwa, Peshawar.
2. Director General Excise, Directorate of Excise, Taxation and Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.
3. The Excise and Taxation Officer, District Kohistan.

(Respondents)

AFFIDAVIT

I, **Asif Iqbal** Excise and Taxation Officer Kohistan, do hereby solemnly affirm and verify on oath that the contents of accompanying "**Para Wise Reply**" are true and correct to the best of my knowledge and belief, and nothing has been kept concealed or misstated.



THE DEPONENT.

CNIC #