

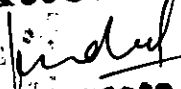
of the Khyber Pakhtunkhwa Government Servant (Efficiency and Disciplinary) Rules 2011.

27

On the basis of above mentioned findings and recommendations DG Prosecution Khyber Pakhtunkhwa being Competent Authority imposed major penalty of removal from service upon Mohammad Ismail N/Q District PP Office Torghar with immediate effect (Annex-7).

After the said order the accused official being aggrieved by the impugned order (Annex-7) challenged the same before the Khyber Pakhtunkhwa Services Tribunal who vide order dated 03-06-2015 set aside the impugned order and remanded the case to the department to conduct de-novo inquiry strictly in accordance with the law (Annex-8).

In compliance with the order of Khyber Pakhtunkhwa Services Tribunal the Competent Authority appointed the undersigned as inquiry officer to conduct a de-novo inquiry under the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The undersigned being authorized inquiry officer, undertook the inquiry into the allegations leveled against the accused official and called for hearing the accused and other witnesses on 10-10-2015 at 10am in the office of District Public Prosecutor, Swat (Annex-4). The statements of the accused official as well as of the witnesses were recorded in the presence of the accused official. Mr. Mujarab Khan, DPP Swat recorded his statement before the inquiry officer, Mr. Zafar Abbas Mirza, DD Monitoring. He recorded similar statement before the undersigned which is (Annex-9). In his statement he stated that with reference to order dated 30-10-2013 of the learned Sessions Judge/Zilla Qazi Swat, I requested the worthy Director General Prosecution vide letter No. 1205 dated 07-11-2013 for the transfer of Mohammad Ismail NQ to some other districts. The Order of learned Sessions Judge ibid was conveyed to the worthy DG Prosecution. Application No. 6153 dated 04-11-2013 of District and Sessions Judge Swat addressed to me was also conveyed to the Directorate for compliance of his order in term of para No. 12 of the said order which is also placed on file as Annexure -I (consisting on 06 pages(Already available on the File). Accordingly, the worthy Director General Prosecution transferred him to Torghar vide order Annexure-J. Besides this

Attested

Advocate

11/10/2011

04/02/2011

28
ment, I after receipt of inquiry report submitted to me by
sheed Khan and Nisar Alam Khan PP. I, directed Habibullah
Senior Clerk for deduction of his annual increment. My stated
order is Annexure-K (this order is already available on the file). Now
he has reformed himself.

In his statement he did not rebut the charges leveled against the
accused official in the charge sheet and statements of allegations
but in the last sentence of his statement he only stated that "now he
has reformed himself". With these concluding remarks he intends
that minor penalty be imposed upon the accused official.

Mr. Ibrar Ahmad Tehsildar/ Naib Tehsildar Land Reforms also
recorded his statement before the undersigned being inquiry officer
which is (Annex-10). In his statement he stated "that on the day of
occurrence, I was present in the premises of District Courts Swat for
my personal matter. In the meanwhile, I was called by the learned
ASJ-I Swat who showed me two number of Fard Intikhab which on
examination I found fake and forged. Both the copies are placed as
Annexure-L and M. Dated 05-10-2013 was Saturday and our offices
are closed on Saturday and Sunday".

The witness was crossed examined by accused official Mohammad
Ismail. His cross examination is reproduced here as under:-

1. I had not compared these Fards with my office record.
2. I myself expert being gained during my 30 years service.
3. It is correct that I have not obtained any Forensic training and
explained that only in Revenue matters I have gained sufficient
experience during my prolonged service.
4. My statement is recorded in the court of Senior Civil Judge.
Swat in the instant matter, the printed form of Fard is correct,
however, the entries therein was fake and forged.
5. It is correct that we have not made any inquiry in the
preparation of these Fards.

In his statement Mr. Ibrar Ahmad Tehsildar declared the entries in
printed Fards as fake and forged one made by the accused official
for the release of accused "Maaz" bailed out by the learned ASJ-I
Swat. He also did not deny the involvement of accused official in
preparation of the fake and forged Fards.

Attested
Indes
Advocate

11/13/1941

11/13/1941

11/13/1941

Mr. Bahram Khan Reader to ASJ-I Swat also recorded his statement before the undersigned which is (**Annex-11**). In his statement he stated that during those days, I was posted as Reader to the court of Additional Sessions Judge-I Swat, I had already recorded my statement in the instant inquiry which I own to be correct and correctly bears my signature. My previous statement is Annexure-N (available on the record). This witness was also cross examined by accused official Mohammad Ismail which is as under:-

28

It is correct that on the day when I lodged the report, I mentioned the name of accused as Ismail but did not mention his parentage. Ismail S/O Amir Zarin is known to me. He was not present in the court, on the day of my report. As evident from his statement that he is still charging accused official for committing forgery with the court.

Mr. Tajbar Inspector/ SHO PS KKS recorded his statement before the undersigned which is (**annex-12**). In his statement he narrated that at the time of registration of FIR 587 dated 05-10-2013 against Ismail etc I was posted as S.I investigation PS Saidu Sharif. Initial investigation was conducted by Mr. Jan Alam Khan ASI, who prepared site plan in the case, prepared pointation memo at the pointation of arrested accused Farooq, Zeeshan Ali and Ajmal Khan. Thereafter, Mr. Jan Alam Khan ASI was gone for training and I took over the investigation of the case. I produced accused Farooq, Zeeshan and Ajmal for recording their **confessional statements**. Except accused Ajmal the other two accused Farooq and Zeeshan recorded their confessional statements before the court of Judicial Magistrate Swat. Accused Farooq and Zeeshan Ali in their confessional statements named accused Ismail as co-accused. For ready reference, photocopies of the confessional statement of both the accused are Annexure-A and B. Accused Ismail was arraigned as accused in the case prior to my investigation. Accused Ismail thereafter file BBA application in the court of Sessions Judge/Zilla Qazi Swat who vide order dated Annexure-C declined BBA to Ismail. Accordingly, he was arrested and I interrogated him. I produced him for recording his confessional statement U/S 164/364 CrPC but he refused to confess his guilt. Thereafter I recorded his statement U/S 161CrPC which is Annexure-D. Ahmad Shah Khan SHO PS Saidu Sharif has already taken into possession the alleged forged deeds at the time of registration of the case. During investigation, the

Attested
[Signature]
Advocate

recovered fake deeds were examined through expert/ concerned Tehsildar who declared the deeds as forged one. The investigation is complete and challan is submitted to court and proceedings in the case are going on against him in the court of Judicial Magistrate Swat. Accused Ismail has been released on bail by the High Court vide order (**Annexure-E**). The concerned Tehsildar has declared the seal and signature as fake and forged hence, Patwari Halqa submitted his report to me which is Annexure-F a self-explanatory. In my investigation, he is accused in the case. Accused Ismail produced copy of affidavit dated 12-10-2013 to me but during investigation neither he nor his counsel produced me this affidavit. This witness was also cross examined by accused official, Mohammad Ismail which is as under:-

30

1. It is correct that no point is given in the site plan to be the presence of Ismail.
2. I did not conduct any test if accused Ismail is capable to writing or operating on computer. Self-stated that accused Ismail is illiterate.
3. It is correct that I failed to ascertain the name and identity of advocate to whom the case record was handed over for onward submission to the court.
4. It is correct that I did not make any recovery of amount from Ismail.
5. It is also correct that it has been shown in my investigation that the alleged recovered note was handed over to Yousaf by co-accused Farooq and Zeeshan.
6. It is correct that I did not collect any direct evidence against Ismail regarding his involvement in the instant case.
7. It is correct that absconding accused Ubaid used to work as deed writer in the court premises.

He deposed against the accused official for committing forgery with the court. He also produced copies of confessional statements of co-accused of Ismail wherein they categorically confessed before the competent court of law that accused official Ismail has prepared fake and forged Fards for them in order to release accused "Maaz" on payment of Rs. 6000/-.

Attested
[Signature]
Advocate

Mr. Nisar Alam PP ATC Swat also recorded his statement before the undersigned which is (annex-13). In his statement he stated that I, Mujarrab Khan DPP Swat, Saeed Naeem Sr. P.P Swat and Mohammad Naeem APP Swat have recorded joint statement wherein we have narrated that accused/official Ismail is a nuisance, enjoyed bad reputation and is injurious to the District Prosecution. The order of the court of Sessions Judge Swat dated 30-10-2013 attached as Annexure-G is evident about the character/ activities of the accused official, Ismail. His previous conduct can be ascertained by the disciplinary action already taken against him, I own my this statement which is correct and correctly bear signatures of all of us. Further, I and Jamsheed Khan PP have submitted final report wherein we have recommended for the punishment in the shape of deduction of two annual increments from the accused Ismail due to his bad conduct and misconduct. Our report is already available on file which is annexure-H.

Self-stated that I suggest and request the honorable high ups that Mohammad Ismail Ex-Naib Qasid of this office is a sole source of income of his family, he has having minor kids and there is no other source of income except his salary. As I know, presently he repented and mended his way. I was of the view when I submitted my previous statement that Ismail NQ would be punished with minor penalty I.e stoppage of increment and deduction of annual increment. The present punishment I think is more enough and harsh. On humanitarian grounds it is required to be revisited, in the best interest of his family.

His this statement is obvious that accused official is a constant nuisance, enjoyed bad reputation and is injurious to the District Prosecution but he requested the undersigned as well as high ups on humanitarian grounds that he is a sole source of income of his family besides this his repentance and mended his ways, therefore he is of the view that he be punished leniently i.e. stoppage of increment and deduction of his annual increment. He is of the view that the punishment of removal from service is very harsh and is more than enough therefore, he requested for lesser punishment to the accused official.

Mr. Saeed Naeem Khan Sr.PP ATC Swat also recorded his statement before the undersigned which is (annex-14). In his

Attested
[Signature]
Advocate

[Faint, illegible text and stamps at the bottom of the page]

statement he stated that on the day of instant allegation, I sent Mohammad Ismail Naib Qasid with my family to Peshawar being a driver. On the following day, he told me that a criminal case has been registered against him on the day when he was in Peshawar along with my family. Mohammad Ismail is known to me since his attachment in my office. Initially I have found some irregularity in discharging of his duty, I instructed and advised him on different occasion to reform him, and he suffered a lot, particularly his family with the agony of his dismissal.

Previously I made recommendation for the punishment just for his reformation but the punishment as rest on his dismissal from service is more than enough. I suggest that mercy may please be observed in his case. Now he has reformed himself and bent his way.

This witness in his statement did not mention that on the eventful day at what time he send the accused official to Peshawar. He might send him to Peshawar after closing duty hours of courts/ offices whereas per record accused "Maaz" was released on bail at morning time of the day of occurrence. However in concluding para of his statement he intends that minor punishment be imposed upon the accused official.

Mr. Mohammad Ismail Ex- Naib Qasid office of the District Public Prosecutor Swat (accused official) also recorded his statement before the undersigned which is (annex-15). In his statement he stated that during those days, I was serving as Naib Qasid in the office of District Public Prosecutor Swat and I was attached with Mr. Saeed Naeem Senior Public Prosecutor Swat. On 05-10-2013, I was present in my office. Senior Public Prosecutor Swat handed over to me, keys of his car with the direction to change mobile oil at the workshop. Thereafter, I came back to my office. Gunner Jan Alam of Senior Public Prosecutor was also with me. When I met Mr. Saeed Naeem Khan, he directed me to take his family to Peshawar. He also gave me some amount for CNG and miscellaneous expenses, Accordingly, I took the family of Saeed Naeem Sr. PP Swat to Peshawar and on the next date, I returned on 06-10-2013 to Swat. When I returned to my home, my brother Tariq Aziz informed me that I have been implicated in the criminal case, Thereafter, I applied for BBA which was granted to me. On the date of confirmation of my BBA, the learned Sessions Judge called my service record and on

Attested
[Signature]
Advocate



71120112

0720000A

... ..

33
examination nothing adverse was found by him against me. However, he did not confirm my BBA. I was handed over to police and during interrogation, nothing incriminating was recovered from my possession. After rejection of post arrest bail by the learned Sessions Judge Swat, I applied for my release on bail in the Darul Qaza Swat and my bail was allowed and released on bail. I was roped falsely in the criminal case. I am innocent and not involved in any criminal or other activities being a government servant. I always worked to entire satisfaction of my superiors. The disciplinary proceedings initiated against me, may kindly be dropped and may be exonerated from the inquiry. In the previous inquiry, I have already replied to the final show cause notice submitted to Mr. Asmatullah Khan Gandapur the Director General Prosecution, Khyber Pakhtunkhwa, I also rely on my said reply which is annexure-O (consisting on 02 pages) which is correct and correctly bears my signature.

The accused official was cross examined by the undersigned as under:-

1. It is correct that I have been transferred from this district to district Torghar on the written order of Mr. Sharif Ahmad Khan Sessions Judge Swat.
2. It is also correct that I was charged in another criminal case, he explained that, that very matter was of a dispute over amount of my cousin Sultan Zarin with the complainant party of that case, though initially I was charged but at the commencement of trial, I was honorably acquitted U/S 265-CrPC by ASJ-III Swat.

The accused denied the allegations and claimed that he has been falsely roped in the case. He is innocent and is not involved in any criminal or other activities prejudicial to the service disciplinary. Hence, the allegations are baseless, unfounded and he may be exonerated from the charges leveled against him.

But the available record and statements of witnesses speaks otherwise.

In cross examination the accused official admits that he has been transferred to Torghar on the written complaint of the learned Sessions Judge, Swat. The learned Sessions Judge, Swat in his order dated 30-10-2013 directed the Directorate of Prosecution/

Attested


Advocate

department that in addition to any other disciplinary action against the accused official he shall be immediately and permanently exclude and post out from the court premises of District Swat to some other district. (34)

He further admits that he was previously involved in criminal case and was acquitted from the said case on the basis of compromise. This also speaks his conduct which certainly is prejudicial to good order and service discipline.

However District Prosecution Swat requested for lenient action against the accused official on the grounds that he reformed himself therefore they all request that mercy may be observed in his case. They are of the view that the present punishment of removal for service they think is more enough and harsh. On humanitarian grounds they requested the high ups that it is required to be revisited, in the best interest of his family.

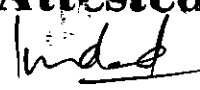
FINDINGS.


Keeping in view the facts, statements of witnesses, it is proved that the accused official namely, Mohamamd Ismail N/Q, DPP Office, Torghar is responsible for the acts of commission and omission referred in the charge sheet and statement of allegations. His conduct is prejudicial to good order and service discipline.

RECOMMENDATIONS.

I, the undersigned hereby recommend to the Director General, Prosecution, being a competent authority for appropriate order:-

"On the basis of the facts, statements of witnesses and keeping in view the request of the District Prosecution Swat that lenient action be taken in case of the accused official, I, recommend that Mr. Mohammad Ismail, the accused official is liable for the penalty specified in section 4(b) (i) or any other penalties specified in section 4 of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011 as deemed consider appropriate."

Attested

Advocate


MOHAMMAD IBRAHIM
Inquiry Officer
25/09/2014

35



**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

No. DP/ED-APP/11276
Dated Peshawar 03/12/2015
Office Phone # 091-9212559
Fax # 091-9212559
E-mail: kpprosecution@yahoo.com

(by Registered)

To

The District Public Prosecutor,
Swat.

Subject:- FINAL SHOW CAUSE NOTICE.

Dear sir,

I am directed to refer to the subject noted above and to enclose herewith a Final show cause notice (in duplicate) duly signed by the competent authority alongwith Inquiry report.

It is, therefore, requested that the above mentioned Final show cause notice be served upon Muhammad Ismail, re-instated as Naib Qasid for the purpose of De-nevo; and duplicate copy may kindly be signed and return to this Directorate as token of receipt for further information, Please.

(Encls as above).

Your faithfully,

for (MUHAMMAD MUZAFAR)
Assistant Director Admin/Finance

Attested

Advocate

Handwritten notes in Urdu: "Alb", "11-12-05", "No 3441", "dat. 11-12-015".

Handwritten notes in Urdu: "وصول", "12-12-015".

Handwritten notes in Urdu: "تعمیر", "12-12-015".

Handwritten notes in Urdu: "نوٹس", "12-12-015".



36

DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA

No. DPP/ _____
Dated Peshawar / /
Office Phone # 091-9212559
Fax # 091-9212559
E-mail: kpprosecution@yahoo.com

FINAL SHOW CAUSE NOTICE

I, Shafir Ullah, Director General Prosecution, Khyber Pakhtunkhwa as competent authority, under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011, do hereby serve upon you, Muhammad Ismail, Naib Qasid, office of the District Public Prosecutor, Swat as follow:-

- (i) That consequent upon the completion of De-nevo Inquiry conducted against you by Muhammad Ibrahim, DPP, Dir (Lower), for which you were given an opportunity of hearing & also recorded your statement. Thus,
- (ii) On going through the findings and recommendations of the Inquiry Officer, together material on record and other connected papers beside your defence version before the Inquiry Officer,

I am satisfied that you are found guilty of misconduct and lack of service discipline in term of Rule-3 of the said Rules.

2. As a result therefore, being a competent authority, the undersigned tentatively decided to impose upon you the penalty of "**Removal from Service**" under Rule-4 of the Rule ibid.
3. You are therefore, required to show cause as to why the after said penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this Notice is received within seven(07) days or not more than fifteen (15)days of its delivery, it shall be presumed that you have no defence to offer and in that case an Ex-Parte action shall be taken against you.
5. A copy of the findings of the Inquiry officer is enclosed.

Attested
[Signature]
Advocate

[Signature]
11/2/15
Shafirullah
Director General (Prosecution)
Khyber Pakhtunkhwa



OFFICE OF THE
DISTRICT PUBLIC PROSECUTOR
SWAT AT GULKADA

37

No. 1418 /DPPSwat/

Dated 28 /12/2015

Phone & Fax # 0946-9240457
Email: dppswat@yahoo.com

To

The worthy Director General,
Directorate of Prosecution,
Govt: of Khyber Pakhtunkhwa,
Peshawar.

Subject: **REPLY TO THE FINAL SHOW CAUSE NOTICE.**

Respected Sir,

Reference the Assistant Director Administration/Finance, Directorate of Prosecution, Govt: of Khyber Pakhtunkhwa, Peshawar letter No. DP/E&A/PF/11276, dated 03-12-2015, on the subject noted above.

The self explanatory reply to the above noted show cause by Muhammad Ismail Naib Qasid is hereby submitted please.

DISTRICT PUBLIC PROSECUTOR
SWAT AT GULKADA

Endst: of Even No. & Date:

Copy forwarded to:

1. The Assistant Director Administration/Finance, Directorate of Prosecution, Govt: of Khyber Pakhtunkhwa, Peshawar w/r to above.
2. Muhammad Ismail Naib Qasid.

for information please.

DISTRICT PUBLIC PROSECUTOR
SWAT AT GULKADA

Attested

[Signature]
Advocate

SENDING REPORT

38

30 Dec. 2015 11:14AM

YOUR LOGO : DPP SWAT
YOUR FAX NO. : 106

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	0919223420	30 Dec. 11:11AM	02'35	SND	03	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

Attested

[Handwritten Signature]

Advocate

39

To

The Director General (Prosecution)
Khyber Pakhtunkhwa,
Peshawar.

Subject: REPLY TO THE FINAL SHOW CAUSE
NOTICE

Respected Sir,

Reference No DP/ E&A/PF/11276 dated
Peshawar 03-12-2015 (Received on 21-12-2015)

My reply to the final show cause notice is as
under.

I am not guilty of misconduct and lack of service
discipline in term of Rule 3 Service rules mentioned in
your letter under reference.

No proper inquiry has been conducted against me
and the Inquiry Report is based on whims and surmises.
Neither my earlier replies have been taken into
consideration nor has any solid or concrete evidence been
collected in my presence by the Inquiry Officer. Even I
have not been given the fair chance of cross examination.
The charges leveled against me have not been proved. This
is preplanned and predecided disciplinary case against me
and the authorities are adamant to make me suffer for no
fault of mine. The Inquiry Officer has not been pleased
even to know the exact details of the case before the
Additional Session Judge 1. Neither I was present on that
day nor there is any evidence against me to connect me
with that story. Furthermore that the order of the
Honourable District & Sessions Judge Swat with regards
my transfer is illegal and coram non iudice, not being the

Attested
[Signature]
Advocate

40

competent authority, but the same is considered as punishment by the enquiry officer so how can I be punished twice for the same alleged offence, he has considered the said order to the extent of my punishment and has left the other aspect untouched, which is never approved by the law and natural justice.

The competent authority may be pleased to take into consideration my version of innocence and to see the inquiry report, which is devoid of any substantive and circumstantial evidence against me. The tentative decision of the competent authority to impose upon me the major penalty is also neither justified nor based on solid evidence. As earlier submitted the whole process is just an eye wash. The basic concept of the inquiry is to find out, if any, the evidence, but in my presence.

No fair chance of defence has been afforded to me, which fact is violative of the constitutional rights

I wish to be heard in person.

It is, therefore, very respectfully prayed that on acceptance of this reply I may kindly be exonerated and the departmental proceedings initiated against me be filed without any further action.

Yours Obediently,

Muhammad Ismail
Muhammad Ismail

Naib Qasid

28/12/015

Attested

[Signature]
Advocate



Annexure "F"

**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

Dated Peshawar 29 April, 2016

Office Phone # 091-9212559 / 091-9212542

Fax # 091-9212559

Email: kprosecution@yahoo.com



ORDER:

No. DP/E&A/ PF/549-95 - Dated 29-04-2014,

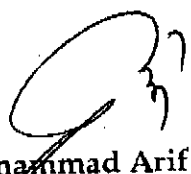
Whereas, Mr. Muhammad Ismail, Naib Qasid during his tenure at DPP Office Swat was charged for preparation of forged documents for the release of accused namely Maaz with the intention to cheat the staff of Additional Session Judge, Swat and a criminal case to this effect was registered against him vide FIR No. 587 dated 05-08-2013 u/s419/420/468/471 PPC in the Police Station Saidu Sharif, Swat.


Whereas, he was charge sheeted vide order No. DP/E & A/1(60)/7883-85 dated 03.09.2015 and Muhammad Ibrahim Khan, District Public Prosecutor Dir Lower was appointed as inquiry officer to conduct De-novo Inquiry against him under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules 2011 as per compliance of order dated 03.06.2015 passed by Khyber Pakhtunkhwa Service Tribunal, Camp Tribunal at Swat, and the charge was proved against him.

Whereas, a Final Show Cause Notice was served upon the accused official and also called upon for personal hearing, however, he could not move a convincing reply.

And whereas, the accused official hereinabove has been found guilty of misconduct under the E & D Rules, 2011.

Therefore, I Muhammad Arif Khattak, Director General Prosecution Khyber Pakhtunkhwa being Competent Authority, under Rule-4(1)(b)(iii) of the Rules ibid, do hereby impose major penalty of " **removal from service** " upon Muhammad Ismail, accused official, who was posted as Naib Qasid at District Public Prosecutor Office, Torghar, with immediate effect.


 (Muhammad Arif Khattak)
 Director General Prosecution
 Khyber Pakhtunkhwa

Attested

Advocate

To

The Secretary to the Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department,
Peshawar.

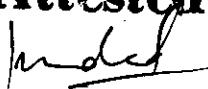
Subject: Appeal against the order No. DP/E&A/PF/5491-95 dated 29-04-2016, communicated on 02-05-2016, whereby the appellant was removed from service by imposing major penalty against the law, rules, facts and Shariah.

Prayer: That on acceptance of this appeal the order impugned may very kindly be set aside and the appellant reinstated back into service with all back benefits.

Respected Sir,

The appellant submits as under:

- i. That the appellant got appointed as Naib Qasid at the office of the Public Prosecutor District Swat vide order Endst: No. SLT.15(I)96/4837-95 dated 23-01-2003, after observing all the codal formalities.
- ii. That the appellant was falsely involved in a criminal case FIR No. 587 dated 05-10-2013 u/s 419, 420, 468/471 PPC Police Station Saidu Sharif. The brief facts whereof that are the Learned ASJ/IZQ granted bail to an accused. On furnishing bail bonds. The sureties placed the surety bonds along with revenue record in support of their being financially sound, before the said Learned Court.
- iii. That the reader of the court reported to the Police that the Revenue record showing the financial position of the sureties is fake. Those sureties were arrested, who during the course of investigation named the appellant to be involved with them and consequently the appellant was also arrested. That at the bail stage the Learned Sessions Judge / Zilla Qazi not only rejected the bail application, but also awarded punishment before the trial of the case. It was yet to be determined as to whether the case against the appellant is true or false, but the Learned Session judge was pleased to punish administratively the appellant

Attested

Advocate

43

~~43~~

- by ordering the concerned officer of the appellant to transfer the appellant outside.
- iv. That the August Peshawar High Court, Mingora Bench was pleased to grant the concession of bail to the appellant, however, the case against the accused is still under trail, before Civil Judge Cum Judicial Magistrate 1.
 - v. That on one side the appellant is facing trail and on the other side the disciplinary proceedings (almost unilaterally completed). Moreover in addition to above the appellant was transferred to Torghar (Mansehra), however, the attitude is so revengeful that the pay of the appellant is also being stopped.
 - vi. That the so called inquiry is conducted in such a manner that the appellant was never afforded the opportunity to cross examine any witness against him.
 - vii. That the defence plea has never been considered by the inquiry officer while conducting the inquiry, hence the appellant is condemned as unheard. Moreover the inquiry so conducted was pre-decided one.
 - viii. That the inquiry has been concluded before the conclusion of the trail, wherein proper investigation will be made and also proper evidence will be lead in accordance with the law, but the inquiry officer has not waited for the result of the trail and has condemned the appellant on the basis of a shame inquiry, which is never conducted in proper manner and in accordance with the law.
 - ix. That as a result of the farce enquiry the appellant was removed from service vide impugned order No. DP/E&A/1(1) P/F/4294-99 dated 15-04-2014, communicated on 18-04-2014, against which the appellant filed a departmental appeal and finally filed a Service Appeal No. 1019/2014 which was decided on 03-06-2015 and the case was sent back for de novo enquiry.
 - x. That again the appellant was expecting an impartial enquiry in accordance with the law and rules and fulfillment of all the codal formalities, but again the enquiry seemed to be just an eye wash.
 - xi. That the enquiry officer, under the law and rules was to conduct a full dressed enquiry, but he failed to do so for reasons not known to the appellant. The enquiry officer was supposed to give his own finding, and that too after resorting

Attested
[Signature]
Advocate

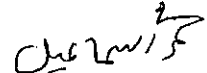
448

to the due course of law, but, he rather based his enquiry on the preceding enquiry and on the basis of the same gave his impartial recommendations, which is never provided for in the law and rules on the subject.

- xii. That the appellant has been condemned as unheard and his constitutional rights have been denied to him.
- xiii. That the appellant has not committed an act of commission or omission which may constitute any offence under any law.
- xiv. That the appellant wants to be heard in person.

It is, therefore, very humbly prayed that on acceptance of this appeal the order impugned may very kindly be set aside and the appellant reinstated into service with all back benefits. Furthermore the appellant be order to serve at District Swat, where he is appointed.

Yours obediently


Muhammad Ismail
8-5-016

Attested


Advocate

the matter of:-

Muhammad Ismail

Appellant

VERSUS

The Govt. K.P. Through
Secretary Home.

Respondent

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this ____ day of ____ 2016.

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk

G.T. Road Mingora, District Swat.

Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,

G.T. Road, Mingora, District Swat

Cell No. 0333-929 7746

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

Service Appeal No. _____ of 2016

Muhammad Ismail, Ex-Naib Qasid at Public Prosecutor
Office Swat.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and Others.

...Respondents

**APPLICATION FOR AMENDING
THE SERVICE APPEAL**

Respectfully Sheweth:

- i. That the above titled service appeal is pending before this Honourable Tribunal for today.
- ii. That the appellant got the order of rejection of his departmental appeal vide NO: SO (Pros)/HD/1-29/2012/Vol-1 PESHAWAR DATED 29TH SEPTEMBER, 2016 (received on 22-10-2016), much latter than the appellant filed the instant service appeal within the Statutory period of 90 days as his departmental appeal was not yet decided till then.
- iii. That now the appellant has got the impugned rejection order of his departmental appeal so in order to reach just conclusion and decide the service appeal on merits the above mentioned rejection order needs to be challenged in the appeal.

It is, therefore, very respectfully prayed that on acceptance of this application the appellant may very kindly be allowed to amend the service appeal

for the purpose of challenging the impugned
rejection order.

Applicant/Appellant

Muhammad Ismail
Muhammad Ismail

Through Counsels,

Imdad
Aziz-ur-Rahman

Imdad
Imdad Ullah

Advocates Swat

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

Service Appeal No. _____ of 2016

Muhammad Ismail, Ex-Naib Qasid at Public Prosecutor
Office Swat.

...Appellant

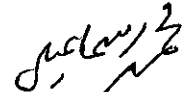
VERSUS

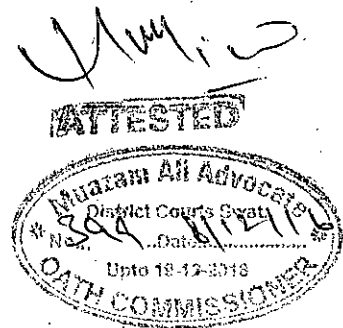
The Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and Others.

...Respondents

AFFIDAVIT

It is stated on Oath that all the contents of this
application are true and correct and nothing has been
misstated.


Deponent



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

Service Appeal No. _____ of 2016

Muhammad Ismail, Ex-Naib Qasid at Public Prosecutor
Office Swat.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and Others.

...Respondents

**APPLICATION FOR AMENDING
THE SERVICE APPEAL**

Respectfully Sheweth:

- i. That the above titled service appeal is pending before this Honourable Tribunal for today.
- ii. That the appellant got the order of rejection of his departmental appeal vide NO. SO (Pros)/HD/1-29/2012/Vol-1 PESHAWAR DATED 29TH SEPTEMBER, 2016 (received on 22-10-2016), much latter than the appellant filed the instant service appeal within the Statutory period of 90 days as his departmental appeal was not yet decided till then.
- iii. That now the appellant has got the impugned rejection order of his departmental appeal so in order to reach just conclusion and decide the service appeal on merits the above mentioned rejection order needs to be challenged in the appeal.

It is, therefore, very respectfully prayed that on acceptance of this application the appellant may very kindly be allowed to amend the service appeal

for the purpose of challenging the impugned
rejection order.

Applicant/Appellant

Muhammad Ismail
Muhammad Ismail

Through Counsels,

Aziz-ur-Rahman
Aziz-ur-Rahman

Imdad Ullah
Imdad Ullah

Advocates Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2016

Muhammad Ismail, Ex-Naib Qasid at Public Prosecutor
Office Swat.

...Appellant

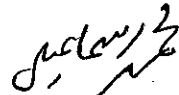
VERSUS

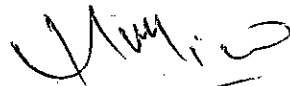
The Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and Others.

...Respondents

AFFIDAVIT

It is stated on Oath that all the contents of this
application are true and correct and nothing has been
misstated.


Deponent



ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service appeal No. _____ 804/ 2016

Muhammad Ismail, Ex Naib Qasid of District Public Prosecutor Office Swat

..... **Appellant**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary and others.....Respondents

WRITTEN REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:-

1. That the appellant has got no cause of action.
2. That the appeal is not maintainable in the present form.
3. That the appellant has got no locus standi to bring the appeal in hand.
4. That this honorable Tribunal has got no jurisdiction to entertain the instant appeal.
5. That the appellant is estopped by his own conduct to file the present appeal.
6. That the appellant has not come to this Tribunal with clean hands.
7. That the appellant has concealed the material facts from this Tribunal.
8. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

ON FACTS

- i. Para-i pertains to record, hence needs no comments.
- ii. Para-ii is correct to the extent that the appellant is charged in case FIR No. 587 dated 05-10-2013 U/S 419/420/468/471-PPC P.S Saidu Sharif. While the investigation of the case shows that the accused was prima facie connected with the commission of the offence of cheating/personation/fraudulent acts. His bail application was rejected by the Lower Courts, however, he was allowed bail by the High Court/ Dar ul Qaza, Swat.

- iii. Para-iii is misconceived. As this para pertains to the investigation/ judicial proceedings for which Police Department/ Judicial Department will be in better position to respond to the same.
- iv. Para-iv needs no comments.
- v. Para-v is incorrect. The appellant was properly associated with the inquiry proceedings as admitted by him to the effect of recording his statement before the Inquiry Officer. Furthermore, inquiry against the official was conducted in accordance with KP (E & D) Rules, 2011 and after observing all the codal formalities, the appellant was awarded the punishment of removal from service.
- vi. Para-vi pertains to record hence needs no comments.
- vii. Para-vii is incorrect, the inquiry officer conducted the inquiry strictly in accordance with E & D Rules and keeping in view the order of the Honourable Tribunal. The appellant was associated with the inquiry proceedings, his statement was recorded and the entire proceedings were conducted in his presence. There was sufficient material available to prove the charges leveled against the appellant and submitted his recommendation to the competent authority.
- viii. Para-viii is correct to the extent that major penalty of removal from service was imposed on 29-04-2016 while rest of the para is incorrect as the departmental appeal was submitted by the appellant on 04-08-2016 which was rejected by the appellant authority on merit vide letter dated 29-09-2016 and was served on him on 07-10-2016 (**copies are enclosed as Annexures-A, B and C respectively**).
- ix. Para-ix is correct to the extent that the competent authority rejected the departmental appeal on merit by fulfilling all the legal formalities, there is no malafide, ill will on the part of competent authority hence denied. Rest of para is legal.

GROUNDS:-


- a) Para-a of the ground is incorrect. The appellant was given full opportunity to defend himself. The perusal of the service record of the appellant reveals that the same is full of explanation and complaints etc. He also remained involved in a case of Haraaba registered vide FIR No.

558 dated 02-11-2009 P.S Mingora, copy of the FIR is **(Annexure-D)**. Similarly, the officers of the District Prosecution Swat jointly submitted a complaint against the appellant regarding his bad reputation etc is **(Annexure-E)**. The officers of District Prosecution Swat have also jointly requested to DPP for the transfer of the appellant because of his suspicious activities and intentionally avoiding the official duties **(Annexure-F)**. Thus the entire service record of the appellant is full of complaints and his casual attitude toward his duty. He remained involved in two criminal cases discussed above during his service. He even tried to deceive the court consequently FIR No. 587 dated 05-03-2013 as discussed above in the preceding para was registered against him. He brought a bad name for the Prosecution in District Swat.

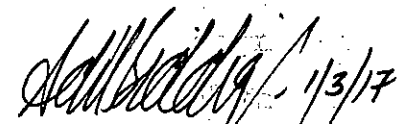
- b) This para is incorrect. Proper evaluation of material on record has been made.
- c) This para is misconceived. Detailed reply to this para is given vide Para-a of the grounds.
- d) Incorrect. As replied vide Para-a above.
- e) This para is also misconceived and incorrect. According to circular letter No. SOR.II(S&GAD)5(29)/86(KC) dated 08-01-1990 issued by the Establishment Departmental Proceedings vis-à-vis Judicial Proceeding from an identical charge can be run parallel to each other. Such proceeding can take place simultaneously against an accused on the same set of facts and yet may end differently without effecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Government Servants has been acquitted by a court. The two proceedings are to be perused independently of each other and it is not necessary to keep pending Departmental Proceeding till the finalization of Judicial Proceeding. Moreover the appellant was transferred to District Torghar, not as of revenge but the same was an administrative order, however, he did not comply the order of the competent authority and remained absent and even did not assume the charge of his new post at District Torghar **(Annexure-G)**.
- f) This para is incorrect. The appellant was given all the opportunities to defend himself. He was associated with the inquiry proceedings. His statement was recorded and was afforded an opportunity to cross examine. Even final show cause was also issued to the appellant vide **(Annexure-H)**.

- g) This para is also incorrect. As stated in the preceding paras, the appellant was given full opportunity to defend himself. The matter was decided after taking into consideration all material facts and evidence on record.
- h) This para is also misconceived and incorrect. It is now settled principle laid down by the apex court in its judgment (2008 PLC (CS) 229 Supreme Court) that the disciplinary and criminal proceedings may run side by side and may end with different results, copy of the judgment is **(Annexure-I)**. Moreso, reply of Para-e above is in detail.
- i) The appellant was treated in accordance with Law and Rules.


Keeping in view the above, it is requested that the appeal, being devoid of force, may kindly be dismissed with special costs.



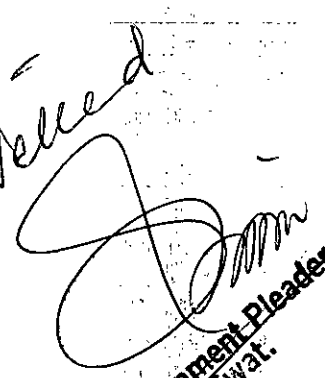
Secretary
Home & Tribal Affairs Department
Khyber Pakhtunkhwa & for
(Respondent No.1)



Director General Prosecution
Khyber Pakhtunkhwa
(Respondent No.2)



District Public Prosecutor
Swat
(Respondent No.3)



Government Pleader
Swat.

Annex-A

181

To: -

The Secretary to the Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department,
Peshawar.

Annex-A

Subject: -

APPEAL AGAINST THE ORDER NO. DP/E&A/PF/5491-95 DATED: 29/04/2016,
COMMUNICATED ON 02/05/2016, WHEREBY THE APPELLANT WAS
REMOVED FROM SERVICE BY IMPOSING MAJOR PENALTY AGAINST
THE LAW, RULES, FACTS AND SHARIAH

Respected Sir;

With due respect and humble submission that I have submitted appeal to
your good self through TCS on 08/05/2016 but no fruitful result received so far.

It is therefore humbly requested that the matter may kindly be expedited at
the earliest. I will be pray for you life, health and prosperities.

Muhammad Ismail
Ex: Naib Qasid
District Public Prosecutor,
Office Swat.

4/8/016

DG (Procs)
For appropriate action pl.

8/8/16

D.D. (A)

3/8/9



Annex-B

Government of Khyber
Home & Tribal Affairs Department
NO. SO (Pros)/HD/1-29/2012/vol-I
Peshawar dated the 29th September, 2016.

To


The Director General Prosecution,
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST THE ORDER NO .DP/E&A/P/F/5491-95 DATED 29-04-2016 COMMUNICATED ON 02-05-2016, WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE BY IMPOSING MAJOR PENALTY AGAINST THE LAW, RULES, FACTS AND SHARIAH

Dear Sir,

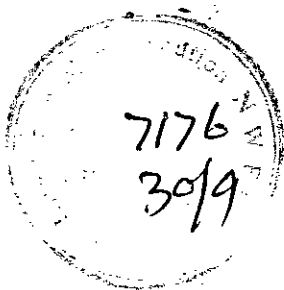
I am directed to refer to your letter No. DP/E&A/PF/ (38)-15 Ismail/9794 dated 22/0/2016 on the subject noted above and to state that the departmental appeal, in respect of Mr. Muhammad Ismail, Ex-Naib Qasid, office of the District Public Prosecution Swat, was considered is rejected on merit by the competent authority.


Yours faithfully,




Section Officer (Prosecution)
Ph: # 091-9210541
Fax: # 091-9210201

C.c:-

P.S to Secretary Home & TAs Department.



30/9/16


DD (A) 
30/9 



Annex - C

DIRECTORATE OF PROSECUTION

KHYBER PAKHTUNKHWA

No. DP/E&A *1(38)16-Ismail/*

Dated Peshawar 7th day of October 2016

Office Phone # 091-9212559/ 091-9212542

Fax # 091-9212559

E-mail: kprosecution@yahoo.com

17442-43

To

The District Public Prosecutor,
Swat.

Subject:- **APPEAL AGAINST THE ORDER NO.DP/E&A/E/F/5491-95 DATED 29-04-2016 COMMUNICATED ON 02-05-2016 WHEREBY THE APPELLANT WAS REMOVE FROM SERVICE BY IMPOSING MAJOR PENALTY AGAINST THE LAW, RULES FACTS OF SHARIAH**

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith copy of letter NO.SO(Pros)/HD/1-29/2012/Vol-I dated 29-09-2016, which is self-explanatory.

It is, therefore, requested that the above mentioned order may kindly be served on Mr. Muhammad Ismail Ex-Naib Qasid office of District Public Prosecutor, Swat and acknowledgment receipt of the order may kindly be obtained from the official and return the same to this Directorate as a token of receipt for information / record please.

(Encloses as above)

Yours faithfully,

ole

(SAHIBZADI YASMEEN ARA)

Assistant Director Legal

Copy forwarded for information to the:

- Section Officer (Prosecution) Home Department Khyber Pakhtunkhwa Peshawar.

ole

Assistant Director Legal

Handwritten text at the top of the page, possibly a header or title, written in a non-Latin script.

16-11-09
ASR IPS Mangalore

Main body of handwritten text, appearing to be a list or detailed notes, written in a non-Latin script.


Vertical handwritten text on the right margin, possibly a list or index.


Annex - E

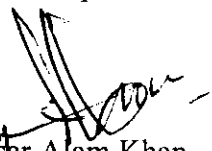
JOINT STATEMENT OF MR. MUJARRAB KHAN DPP SWAT, SAEED NAEEM SENIOR PUBLIC PROSECUTOR ANTI TERRORISM COURT-II SWAT, MR. NISAR ALAM KHAN SENIOR PUBLIC PROSECUTOR ANTI TERRORISM COURT-IV SWAT AND MR. MOHAMMAD NAEEM ASSISTANT PUBLIC PROSECUTOR SWAT.

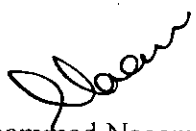
The learned District and Sessions Judge Swat vide letter No. 828/E.C.Brh, dated 14-02-2014 addressed to the District Prosecution Swat has asked for the implementation of order dated 6 dated 30-10-2013 passed in bail petition of Mohammad Ismail charged in FIR 587 U/S 419/420/468/471 PPC P.S Saidu Sharif Swat, the inquiry against the official is pending.

The official is a constant nuisance, enjoys bad reputation which is injurious to the prosecution, the Order of the court referred to above is also evidence about the character / activities of the officials. The previous conduct of het official can be ascertained by the disciplinary action etc (copies of explanation etc placed on inquiry file)


Mujarrab Khan
DPP Swat


Saeed Naeem
Snr.P.P ATC-II Swat


Nisar Alam Khan
Snr.P.P ATC-V Swat


Mohammad Naeem
APP Swat

Annex-A

From:

Public Prosecutors Swat.

To

The District Public Prosecutor.
Swat at Gulkada.

Subject:

TRANSFER OF MUHAMMAD ISMAIL NAIB QASID.

Sir,

It is requested that the subject Naib Qasid is involved in suspected ^{Suspicious} activities and also intentionally avoiding the official duty, time and again the said Naib Qasid is advised to restrain himself from unfavourable, immoral activities but it got no effect on the attitude of the Qasid concerned. Now, it is necessary to transfer Mr. Ismail Naib Qasid from this office to anywhere in the Province, further presence of the said Naib Qasid in the office will deteriorate the working atmosphere of the office and create headache for the officers in discharge of their official duty.

It is therefore unanimously requested by all brother Prosecutors of the office that the subject Naib Qasid may please be transferred from this office and oblige.

Yours obediently,

1. Mr. Nisar Alam Khan Dy.P.P

2. Mr. Anwar Ali Khan Dy.P.P

3. Mr. Abdul Salam APP

4. Mr. Muhammad Naeem APP

5. Mr. Rafiullah APP

Annex - G

**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

No. DP/ EdA/PE/531-32

Dated Peshawar January 12, 2016

Office Phone # 091-9212559/ 091-9212542

Fax # 091-9212559

E-mail: kpprosecution@yahoo.com

The Acting District Public Prosecutor,
Tor Ghar.

Subject: **REPORT/COMMENTS REGARDING CHARGE ASSUMPTION BY
MUHAMMAD ISMAIL THE THEN NAIB QASID.**

Dear Sir,

I am directed to refer to the subject noted above and to say that a transfer order dated 28.02.2014 of the above named official has been made to District Tor Ghar, however, this Directorate has not received any copy of his charge assumption till date.

It is therefore, requested that detail report/comments to the effect that whether the above named person did assume charge at District Tor Ghar in compliance of the above quoted order or otherwise.

Yours Faithfully



(IRSHAD ULLAH)

Deputy Director Admin/Finance

Copy forwarded to :

- The District Public Prosecutor, Mansehra with similar request.



Deputy Director Admin/Finance

fc

Annex-H

**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

No. DP/ EBA/PIF/2(115)05/2792

Dated Peshawar March 24, 2014

Office Phone # 091-9212559/ 091-9212542

Fax # 091-9212559

E-mail: kpprosecution@yahoo.com

SHOW CAUSE NOTICE

I, Asmatullah Khan Gandapur, Director General Prosecution, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve upon you, Muhammad Ismail, Naib Qasid, Office of the District Public Prosecutor, Swat, as follows:-

- (i) That consequent upon the completion of inquiry conducted against you by Mr. Zafar Abbas Mirza, Deputy Director Monitoring, Directorate of Prosecution / the inquiry officer, for which you were given opportunity of hearing and recorded your statement.
- (ii) On going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defence before the inquiry officer.

I am satisfied that you are found guilty of misconduct and lack of service discipline in term of Rule-3 of the said Rules.

5. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the major penalty of removal from service under Rule-4 of the Rules ibid.

6. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

7. If no reply to this Notice is received within seven (7)-days or not more than fifteen (15)-days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

8. A copy of the findings of the inquiry officer is enclosed.

Muhammad Ismail

Muhammad Ismail

ENIC No- 15602-1275209-9

Asmat
(ASMATULLAH KHAN GANDAPUR)
Director General Prosecution
Khyber Pakhtunkhwa

26/03/14

Annex I

PLC (C.S.) 229

Supreme Court of Pakistan

Present: Rana Bhagwandas and Muhammad Nawaz Abbasi, JJ

RAB NAWAZ HINGORO

Versus

GOVERNMENT OF SINDH and others

C.P.L.A. No.502-K of 2007, heard on 7th August, 2007.

Sindh Removal from Service (Special Powers) Ordinance (IX of 2000)---

---Ss. 3 & 5---Constitution of Pakistan (1973), Art.212(3)---Removal from service---Misconduct--- Issuance of show-cause notice and conduct of Inquiry Officer against the petitioner---Departmental Authorities as well as the Tribunal had concurrently found that appointments made by the petitioner were ghost and did not exist at the site, but he had been disbursing their salaries illegally and unauthorizedly---Nothing was on record to rebut said concurrent findings which had been concluded on definite and concrete material on record---Such findings could not be disturbed on flimsy and technical grounds---Petitioner had contended that he had been exonerated in the criminal case registered against him in respect of the illegal appointments in question---Contention was repelled as prosecution on criminal charge and departmental proceedings were entirely independent of each other; as one related to the enforcement of criminal liability, whereas the other was concerned with the service discipline---Acquittal of petitioner on criminal charge could have no bearing on the validity of the disciplinary proceedings---Both the proceedings could proceed side by side and no legal bar existed to the continuation of departmental proceedings after the conviction or acquittal from criminal case---In absence of any ground to interfere with the exercise of jurisdiction by the Service Tribunal, petition for leave to appeal was dismissed.

Petitioner in person.

Ghulam Qadir Jatui, Advocate-on-Record for Respondents.

Date of hearing: 7th August, 2007.

JUDGMENT

RANA BHAGWANDAS, J.---Petitioner has challenged the judgment of the Sindh Service Tribunal (hereinafter referred to as the Tribunal), dated 31-5-2007 whereby his appeal against the order, dated 1-1-2005 of his removal from service on the charge of gross misconduct was dismissed. The petitioner while serving as Assistant Commissioner, Mines Labour Welfare Organization, Labour, Transport, Industries and Commerce Department, Government of Sindh, on an earlier occasion, was removed from service vide order, dated 12-4-2001, which was set aside by the Tribunal in Appeal No.227 of 2001, filed by him vide judgment, dated 1-9-2003 wherein the case was remanded to the department for holding a fresh enquiry in accordance with law within ninety days. In post remand proceedings, the petitioner was proceeded against on the charges contained in the charge-sheet served upon him on 31-12-2003 as under:--

(i) That during your posting as ACML-WO you converted 147 work charged/contingent paid staff into regular establishment by preparing an entirely fabricated statement while the organization did not need their services as the excise duty on specified minerals is collected through the auction or self-assessment basis.

(ii) That you appointed a number of persons whose ages were between 13 and 14 years at the time of their so-called appointment in, 1989.

(iii) That you purchased the office accommodation at Al-Burhan Centre, Saddar, Karachi for Rs.2.0 million which was paid from ledger account (P.L.A.) meant for certain Labour Schemes for the Labourers without the concurrence of Finance Department.

(iv) In their statement, 21 persons who appeared before the Additional Director Labour, Hyderabad reported that you have been taking duty from them in your village and paying them nominal salaries and later the services of whom were reportedly terminated.

(v) That under the order of the ex-Governor, Sindh for scrutiny of ghost employees and fearing exposure, you terminated the services of about sixty-eight employees thus, confirming the allegations of their Ghost Status.

(vi) That you in collaboration with your Accounts Officer Mr. Yar Muhammad Khan continued disbursement of salary to the workers during the period when the contracts for collection of excise duty on specified minerals were awarded to the contractors by public auction whereas it was the obligation of the contractor(s) to pay the salaries to such staff as per agreement signed by you.

(vii) That during the course of identification/verification of alleged regularized work charged employees by the Additional Director Labour, Hyderabad, it was noted that Messrs Abdul Sattar son of Muhammad Akram and Khalid Akram son of Muhammad Akram who believe to be your real nephews were threatening various persons outside the office of Additional Director Labour, Hyderabad of dire consequences if they did not give statements against Mr. Yar Muhammad Khan.

(viii) That as per statement of Dr. Anwar Ali Leghari, Medical Officer/Incharge Lakhra Coal Field Dispensary the following staff is employed in the Dispensary at Lakhra Coal Fields:--

(a) Mr. Aman	(Teacher)
(b) Mr. Muhammad Hashim	(Teacher)
(c) Mr. Shahiman	(Teacher)
(d) Mr. Ghulam Akbar	(Naib Qasid)
(e) Mr. Abdul Rasool	(Naib Qasid)
(f) Mr. Muhammad Arif	(Teacher)
(g) Mr. Nabi Bux	Designation not known

Out of above (7) (seven) employees, only Messrs Shahiman and Muhammad Arif, Teachers were regular, rest were absconding non-existent and drawing their salaries regularly since long.

(ix) That you and Mr. Yar Muhammad Khan continued to disburse the salaries to such staff but parted up on some financial matters and accused each other on corruption although you both were involved in the protection of alleged ghost employees."

2. The reply to the charge-sheet submitted by the petitioner having been found not satisfactory, a

regular enquiry was conducted against him. The Enquiry Officer having found him guilty of the charges, submitted his report accordingly. Consequently, he was served with a final show-cause notice and was also supplied a copy of the enquiry report. The petitioner submitted his reply to the final show-cause notice and competent authority having provided him an opportunity of personal hearing, removed him from service vide order, dated 1-1-2005. The petitioner challenged his removal from service before the Tribunal but without any success, hence this petition.

3. The petitioner had engaged Mr. Ghulam Qadir Jatui, learned Advocate Supreme Court/Advocate-on-Record to represent him before this Court in this petition but today he having bypassed his learned counsel, has preferred to himself argue the case and in order to procrastinate the proceedings, has made an oral request for adjournment, which has been declined. The main contention of the petitioner is that during the course of enquiry, witnesses were examined in his absence and he was not afforded opportunity of cross-examination. The contention of the petitioner is not borne out from the record in view of the observation of the Tribunal that petitioner instead of appearing before the Enquiry Officer, made an application that fresh enquiry could not be held against him beyond the period of ninety days, prescribed by the Tribunal and thus, the concurrent findings of fact, in this behalf are not open to exception in this petition for leave to appeal. The petitioner then, on merits, contended that all appointments were made by him with the approval of the competent Authority and he was not responsible for the alleged illegality in the appointments but he without disputing the appointments of persons of the age of 13/14 years submitted that there is no bar to the appointments of minors, which were duly proved by the competent Authority and made an attempt to justify the appointments of minors. Be that as it may, there are concurrent findings of the departmental authorities as well as the Tribunal to the effect that the appointments made by the petitioner were ghost and did not exist at the site but he has been disbursing their salaries illegally and unauthorisedly. There is nothing on record to rebut the above findings which have been concluded on definite and concrete material on record and we are not inclined to disturb the same on flimsy and technical grounds.

4. The last contention of the petitioner is that he has been exonerated in the criminal case registered in respect of the illegal appointments in question. It is well-settled proposition of law that prosecution on criminal charge and departmental proceedings are entirely independent to each other as one relates to the enforcement of criminal liability whereas the other is concerned with the service discipline. Therefore, acquittal on criminal charge may have no bearing on the validity of the disciplinary proceedings. Indeed, both the proceedings can proceed side by side and there is no legal bar to the continuousness of departmental proceedings after the conviction or acquittal from criminal case. There is plethora of case-law on the subject but we would not refer to anyone as the law is well-settled.

5. For the aforesaid facts, circumstances and reasons, we find hardly any ground to interfere with the exercise of jurisdiction by the Tribunal. Consequently, petition fails and is hereby dismissed.

H.B.T//R-12/SC

Petition dismissed.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service appeal No. _____ 804/2016

Muhammad Ismail, Ex Naib Qasid of District Public Prosecutor Office Swat

..... Appellant

VERSUS

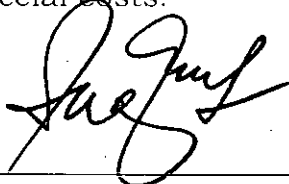
1. The Government of Khyber Pakhtunkhwa through Secretary Home Department, Peshawar and others..... Respondents

WRITTEN REPLY ON APPLICATION FOR AMENDING THE
SERVICE APPEAL

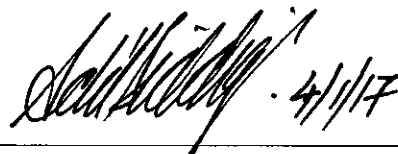
Respectfully Sheweth,

- i. Para-i: needs no comments.
- ii. Para-ii: is incorrect as the departmental appeal was submitted by the appellant on 04-08-2016 which was rejected by the appellate authority on merit vide letter dated 29-09-2016 and was served on him on 22-10-2016 (copies are enclosed as Annexures A, B & C respectively). Hence the para is baseless and having no legal ground.
- iii. As replied in above para.

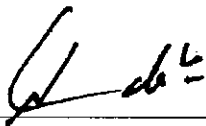
Keeping in view the above, it is requested that the Application for amending the service appeal, being devoid of force, may kindly be dismissed with special costs.



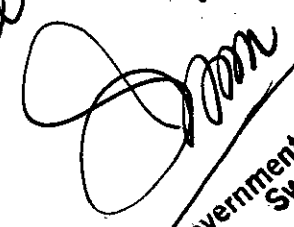
Secretary
Home & Tribal Affairs Department
Khyber Pakhtunkhwa
(Respondent No.1)



Director General Prosecution
Khyber Pakhtunkhwa
(Respondent No. 2)



District Public Prosecutor
Swat
(Respondent No.3)

Valued

Government Pleader
Swat

Annexure - A

To: -

The Secretary to the Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department,
Peshawar.

Subject: -

APPEAL AGAINST THE ORDER NO. DP/E&A/PF/5491-95 DATED: 29/04/2016,
COMMUNICATED ON 02/05/2016, WHEREBY THE APPELLANT WAS
REMOVED FROM SERVICE BY IMPOSING MAJOR PENALTY AGAINST
THE LAW, RULES, FACTS AND SHARIAH

Respected Sir;

With due respect and humble submission that I have submitted appeal to
your good self through TCS on 08/05/2016 but no fruitful result received so far.

It is therefore humbly requested that the matter may kindly be expedited at
the earliest. I will be pray for you life, health and prosperities.

Muhammad Ismail

Ex: Naib Qasid
District Public Prosecutor,
Office Swat.

4/8/016

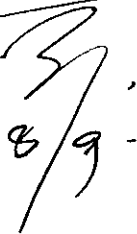
DG (Pros)

For appropriate action pl.



8/9/16

D. D. (A)


8/9

Annexure - B



Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department
NO. SO (Pros)/HD/1-29/2012/vol-I
Peshawar dated the 29th September, 2016.

To

The Director General Prosecution,
Khyber Pakhtunkhwa, Peshawar.

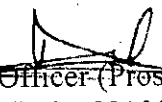
Subject:

APPEAL AGAINST THE ORDER NO .DP/E&A/P/F/5491-95 DATED 29-04-2016 COMMUNICATED ON 02-05-2016, WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE BY IMPOSING MAJOR PENALTY AGAINST THE LAW, RULES, FACTS AND SHARIAH

Dear Sir,

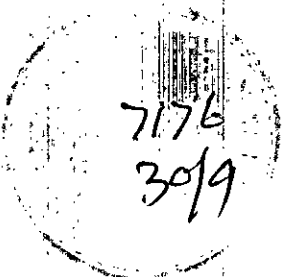
I am directed to refer to your letter No. DP/E&A/PF/ (38)-15 Ismail/9794 dated 22/0/2016 on the subject noted above and to state that the departmental appeal, in respect of Mr. Muhammad Ismail, Ex-Naib Qasid, office of the District Public Prosecution Swat. was considered is rejected on merit by the competent authority.


Yours faithfully,



Section Officer (Prosecution)
Ph: # 091-9210541
Fax: # 091-9210201


C.c:-

P.S to Secretary Home & TAs Department.



30/9/16


DD (LA) 
30/9/16


30/9/16

Annexure - C



OFFICE OF THE
DISTRICT PUBLIC PROSECUTOR
SWAT AT GULKADA

No. 952 DPP SWAT/16

Dated Swat 9-10-16

Phone & Fax # 0946-9240457

Email. dppswat@yahoo.com.au

To

The Worthy Director General,
Directorate of Prosecution,
Govt; of Khyber PakhtunKhwa
Peshawar.

Subject: ACKNOWLEDGMENT RECEIPT OF MUHAMMAD ISMAIL EX-NAIB QASID.

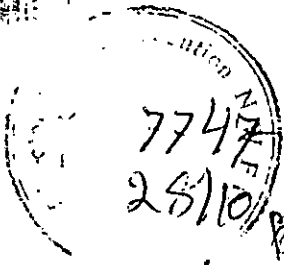
Respected Sir,

With reference to your letter No. DP/E&A 1(38)16-Ismail/17442-43 dated 07-10-2016, received on 19-10-2016 on the subject noted above.

Enclosed, please find herein, the copy of acknowledgment receipt of Muhammad Ismail Ex-Naib Qasid of the office of undersigned as desired.

Enclosure as above:

DISTRICT PUBLIC PROSECUTOR,
SWAT AT GULKADA



Handwritten notes and signatures:
25/10/16
2016

Handwritten notes and signatures:
ADCA?
28/10

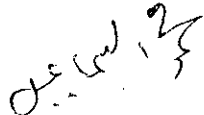
Handwritten notes and signatures:
1/10/16
28/10
Sup
What is this?
EA
1/10/16

ACKNOWLEDGMENT RECEIPT

I Mr. Muhammad Ismail Ex-Naib Qasid Office of District Public Prosecutor, Swat received letter No. SO(Pros)/HD/1.29/2012/vol-I dated 29 September, 2016, of Government of Khyber Pakhtunkhwa Home and Tribal Affairs Department, Peshawar duly signed by the Section Officer Prosecution from District Public Prosecutor, Swat at Gulkada as per direction of worthy Director General Prosecution vide letter No. DP/E&A1(38)16-Ismail/17442-43 dated 7th October, 2016.

Attested By:


District Public Prosecutor,
Swat, At Gulkada.


Muhammad Ismail
Ex-Naib Qasid,
District Public Prosecutor,
Swat, At Gulkada.

22/10/16

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 804/2016

Muhammad Ismail.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through Chief
Secretary and Others.

...Respondents

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, whimsical, against the law, rules and facts and are specifically denied. Moreover the appellant has got a prima facie case in his favour and has approached this Honourable Tribunal well within time with clean hands and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- i. Para 1 of the comments needs no reply.
- ii. Para 2 of the as drafted is whimsical and illusive based on personal surmises, hence the same is denied specifically.

11
5-10-17

- iii. *Para 3 of the comments as drafted is self-contradictory as the respondents have drawn their conclusion and based the penalty solely on those whims, thus the para is denied.*
- iv. *Para 4 of the comments being admission hence needs no reply.*
- v. *Para 5 of the comments as drafted is also misconstrued and against the facts neither was the appellant properly associated with the inquiry proceedings nor are the findings based on the same inquiry rather the previous inquiry, which was rejected by this Honourable Tribunal, is made the base of the same, thus the para is denied specifically.*
- vi. *Para 6 of the comments needs no reply as well.*
- vii. *Para 7 of the comments as drafted is also misconstrued and based on misstatements as the findings of the second inquiry are completely based on the previous inquiry which is against the law and rules, thus the para is denied as well.*
- viii. *Para 8 of the comments as drafted is incorrect and based on misstatements as the appellate order is already annexed which is bald of any reasons whatsoever, thus the para is denied as well.*
- ix. *Para 9 of the comments as drafted also is based on misstatements as the appellate order is completely bald of any reasons neither has the*

appellate authority ever further probed into the matter, thus the para is denied specifically.

On Grounds:

- a) Ground A of the comments as drafted is incorrect and based on misstatements as is evident from the record, moreover the whole of the findings and recommendations made by the inquiry officer are solely and completely based on the previous inquiry, thus the para is specifically denied. Moreover the past acts of the appellant cannot be made the basis for the present penalty under the law and as envisaged in plethora of judgments of the Apex Supreme Court.
- b) Ground B of the comments as drafted is vague, evasive and whimsical thus is amounting to admission, however its needless to mention that the material evaluated are not of the second inquiry conducted, but rather some other material or record, thus the para is denied specifically.
- c) Ground D of the comments as drafted is vague and evasive and is amounting to admission, however the whole of the second inquiry, although conducted upon the specific directions, yet the same is completely based on the previous inquiry, thus the para is denied.
- d) Ground D of the comments as drafted is vague and evasive and also amounts to admission.

- e) Grounds E of the comments as drafted is misconstrued in the case in hand as the allegations levelled against the appellant has never been proven as the same are completely baseless as they could not withstand when put to cross examination, but however the respondents have derived their own conclusion from the same as suited them best, thus the para is denied specifically.
- f) Ground F of the comments as drafted is also incorrect and baseless as the inquiry with which the appellant was allegedly associated was never based of the disciplinary action rather the previous one was made the sole base of the inquiry, thus the para is specifically denied.
- g) Ground G of the comments is also incorrect and based on misstatements hence the same is also denied specifically.
- h) Ground H of the comments is misconstrued when the alleged criminal charges could not be proved in the competent court of law, then how come the respondents or the inquiry officer construed the sme to his own wishes and whims, specially in the manner which suited him the most, thus the para is specifically denied.
- i) Ground I of the comments as drafted is volt face, vague, evasive and illusive as well as is clear from the record, thus the para is denied as well.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.

Appellant

محمد اسماعيل
Muhammad Ismail
Through Counsels

Aziz-ur-Rahman

Imdad Ullah
Advocates Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 804/2016

Muhammad Ismail.

...Appellant

VERSUS

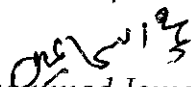
The Government of Khyber Pakhtunkhwa through Chief
Secretary and Others.

...Respondents


AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this rejoinder are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.


Deponent


Muhammad Ismail

Identified By:


Imdad Ullah
Advocate Swat

ATTESTED


UMAR SADIO Advocate,
OATH COMMISSIONER
Distt: Courts Swat.
No. 117 Date: 05/10/17