

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 235/2016

Date of Institution... 14.03.2016

Date of decision... 01.01.2018

Muhammad Tahir Ex-Key Punch Operator/Computer Operator District
Courts at Gulkada, District Swat. ... (Appellant)

Versus

1. The Honourable Registrar Peshawar High Court, Peshawar and 1
other. ... (Respondents)

MR. Imdad Ullah Advocate ... For appellant.

MR. Kabir Ullah Khattak
Addl. Advocate General ... For respondents.

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

JUDGMENT

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

FACTS


2. The appellant was terminated during probation on 26.03.2012 against which he filed departmental appeal (undated).

This departmental appeal was rejected on 15.02.2016. Thereafter he filed the present service appeal on 14.03.2016.

ARGUMENTS

3. Learned counsel for the appellant argued that though the services of the appellant were terminated during probation but the reasons given in the impugned order reflect on the efficiency of the appellant hence notice was must before termination even during probation. In this regard he relied upon some judgments reported as SCMR-2014 1263 entitled "*Majeed Ahmad Memon Versus Liaquat University of Medicall And Dhealth Sciences Jamshoro And Others*", 2012 PLC (C.S) 839, entitled *Zahid Ali & 7 others versus District and Sessions Judg, Nankana Sahib and others, 2003 PLC (C.S) 1421* entitled "*Ch. Muhammadd Hussain Naqshbandi versus*

Government of the Punjab and others". Learned counsel for the appellant further argued that the appellant had already been penalized for his absence by withholding two increments on the previous occasion and again for his absence his termination would amount to double jeopardy. He next contended that under Article 10-A of the Constitution of Islamic Republic of Pakistan, the fair trial demands issuance of at least notice of personal hearing to the appellant.



4. On the other hand the learned AAG argued that the present appeal is time barred and not maintainable. The reason advanced by the learned AAG was that the appellant filed departmental appeal without any date and if it was presumed to be 26.03.2012 he could have approached this Tribunal within 120 days but he waited for the rejection of his departmental appeal for four years and thereafter he filed the present service appeal within 30 days. That there is no application for condonation of delay filed by the appellant. That the appellant was rightly terminated during probation

as no stigma was attracted for termination on the basis of absence as was held by the departmental appellate authority. That the impugned order was rightly passed.


CONCLUSION

5. The objection of the learned AAG regarding limitation is not well founded because when the departmental appeal was rejected on 15.02.2016 then fresh limitation of 30 days would start from 15.02.2016. Had there been no decision on departmental appeal then, of course, the appellant could not have approached this Tribunal beyond 150 days of the passing of the original order.

6. Admittedly, the services of the appellant were terminated during probation. The judgments relied upon by the learned counsel for the appellant speak about issuance of notice to a probationer if his conduct or efficiency etc. is involved. This tribunal is to see whether the impugned order can be interpreted to have had a stigma on the appellant for his future service and engagements. If it is so then surely the requirement of notice was *sine qua non* before passing of

the impugned order. By going through the original termination order the authority had only mentioned the absence of the appellant to be the reason of his termination during probation. He further added that due to his absence the appellant was not able to perform his functions properly. The law on the subject is Section-6&7 of the Khyber Pakhtunkhwa Civil Servant Act 1973 which say that initial appointee shall be on probation as may be prescribed and his service shall be confirmed on the satisfactory completion of his probation as may be prescribed. Section-11 further says that the service of a civil servant may be terminated without notice during probation. Rule-15 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 prescribed the period of probation and Rule-16 adds that a civil servant shall only be confirmed on the completion of probationary period if his performance is satisfactory. There is no mention of the word efficiency but performance. It is cardinal principle of natural justice that even when a probationer is terminated the reason must be

given which is a separate phenomenon than notice. The result is that in cases where notice is not made mandatory, the authority passing the order shall have to give reasons for his order. The authority by terminating the services of the appellant in this case has not given notice to the appellant but has rightly given the reasons for terminating services of the appellant. The reason is his performance and not efficiency. As discussed above the performance and non performance is relevant for terminating the service of probationer. And it is must for an authority to specifically mention about the bad performance of a probationer before terminating the service. But when the word efficiency is used it has a different connotation because word "inefficiency" has been used in the rules regulating disciplinary proceedings. Any government servant can be penalized under disciplinary rules for his inefficiency. The present appellant has not been penalized for his inefficiency but for his bad performance. The authority has rightly used the words unsatisfactory performance in the original order of termination. Absence of the



probationer surely reflects upon his bad performance which was a valid ground for his termination during probation. The judgments relied upon by the learned counsel for the appellant do not speak about performance of probationer and hence are irrelevant for the decision of the present controversy. As Section 11 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides for termination without notice, no ground of fair trial is available to the appellant.

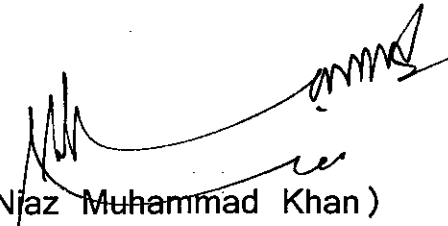
Firstly because this section is still on the statute book and secondly in view of judgment of august Supreme Court of Pakistan reported as 2016-SCMR-943 entitled "*Ishtiaq Ahmad Vs. Hon'ble the Competent Authority*" the elements of fair trial are not applicable with full force before domestic Tribunals under the disciplinary rules.

The Worthy Lahore High Court in a case entitled "*Nadeem Asghar Vs. Province of the Punjab*" reported as 2016 PLC(C.S)155 has elaborately dealt with issue of notice to probationer and has saved the relevant section by applying principle of reading down in those

cases where only performance and not efficiency, competency etc. was involved.

7. As a sequence to above discussion the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Mughal

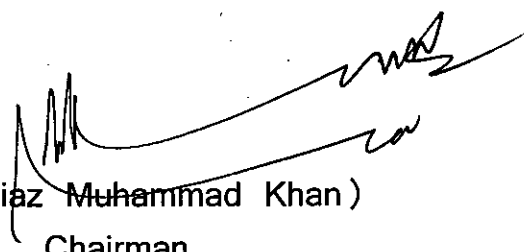

(Niaz Muhammad Khan)
Chairman,
Camp Court, Swat.

(Muhammad Hamid Mughal)
Member

ANNOUNCED

01.01.2018


(Approved for Reporting)


(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

05.10.2017

Counsel for the appellant and Mr. Muhammad Zubair, District Attorney alongwith Muhammad Saeed, SS for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for final hearing before the D.B on 01.1.2018 at camp court, Swat.


Member

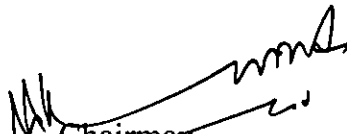

Chairman
Camp court, Swat

01.01.2018

Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Hamid Iqbal, Superintendent for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


Member

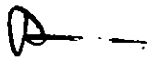

Chairman
Camp court, Swat

ANNOUNCED
01.01.2018

235/2016

05.10.2016

Counsel for the appellant and Mr. Muhammad Zubair, Sr.GP for the respondents present. Rejoinder submitted. Regarding the question of jurisdiction of this Tribunal, full bench has been constituted for disposal of similar nature cases. This case is to be heard after decision of full bench. To come up for final hearing before the D.B on 07.02.2017 at camp court, Swat.



Member



Chairman
Camp court, Swat

07.02.2017

Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader for respondents present. The question of jurisdiction by Full Bench has not yet been decided. Adjourned for final hearing to 06.06.2017 before the D.B at camp court, Swat.



Member



Chairman
Camp court, Swat

08.06.2017

Since the tour programme for the month of June, 2017 to camp court Swat has been cancelled by the Worthy Chairman, therefore, to come up for the same on 05.10.2017 at camp court, Swat. Notices be issued to the parties for the date fixed accordingly.



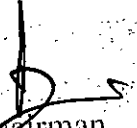
Registrar

06.04.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Computer Operator when his services were terminated vide impugned order dated 26.3.2016 where-against he preferred departmental appeal which was rejected on 15.2.2016 and hence the instant appeal on 14.3.2016.


That the appellant was appointed on 01.04.2010 and that his period of probation has elapsed after one year on 31.3.2011 and as such proceedings and impugned order on the basis of probationary period are against facts and law. That the appellant was not afforded any opportunity of hearing and was removed from service on allegation of late coming and absence from duty which is a stigma and as such a formal enquiry was required to be conducted.

Points urged need consideration. Admit. Subject to deposit of security and process fee, notices be issued to the respondents for written reply/comments for 13.07.2016 before S.B at camp court, Swat.


Chairman
Camp court, Swat.

13.7.2016

Appellant in person and Mr. Ajab Khan, Senior Clerk alongwith Mian Amir Qadir, G.P for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 05.10.2016 at camp court, Swat.





Chairman
Camp Court, Swat

Appellant Deposited
Security Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 235/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1.	2	3
1	14.03.2016	<p>The appeal of Mr. Muhammad Tahir presented today by Mr. Aziz-ur-Rehman 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	21-03-2016	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up thereon <u>06-04-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

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

Service appeal No. 235 of 2016

Muhammad Tahir

... Appellant

VERSUS

The Hon'ble Registrar Peshawar High Court, Peshawar and Others

... Respondents

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5	Copy of office order dated 26/03/2012	B	9
6	Copy of departmental appeal	C	10-13
7	Copy of the judgment of High Court dated 15/02/2016	D	14-16
8	Vakalat Nama	17

Appellant
Through Counsel



AZIZ-UR-RAHMAN
ADVOCATE SWAT
Office: Khan Plaza, Gulshan Chowk,
Mingora, District Swat
Cell No. 0300-9070671

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 235 of 2016

Muhammad Tahir Ex-Key Punch Operator / Computer
Operator District Courts at Gulkada, District Swat.

K.W.F. Province
Service Tribunal
Diary No. 214
...Appellant
Dated 14-03-2016

VERSUS

1. The Honourable Registrar Peshawar High Court,
Peshawar.
2. The District and Sessions Judge / Zilla Qazi
District Swat.

...Respondents

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER OF RESPONDENT NO. 2
BEARING ORDER ENDST: NO. 2119-
2122/ DATED 26-03-2012 VIDE WHICH
THE SERVICE OF THE APPELLANT
ARE TERMINATED AGAINST THE
LAW, RULES AND FACTS AND
WITHOUT FULFILLING THE CODAL
FORMALITIES, AGGRIEVED FROM
THE SAME THE APPELLANT
PREFERRED A DEPARTMENTAL
APPEAL WHICH WAS ALSO REJECTED
VIDE JUDGMENT DATED 15-02-2016 IN
THE SAME MANNER, HENCE BOTH
THE IMPUGNED ORDERS ARE LIABLE
TO BE SET ASIDE.

~~14/3/16~~
14/3/16

PRAYER:

THAT ON ACCEPTANCE OF THIS
APPEAL BOTH THE IMPUGNED

ORDERS MAY VERY KINDLY SET
ASIDE AND THE APPELLANT
REINSTATED BACK INTO SERVICE
WITH ALL CONSEQUENTIAL/BACK
BENEFITS.

Respectfully Sheweth:

Facts:

1. That the appellant was appointed as Computer Operator vide order Endst: No. 1885-97/E.C.Brh: dated 01-04-2010 and that too after the fulfilment of all the codal formalities. Copy of the order is enclosed as Annexure "A".
2. That the appellant was regular performing his duties without any fail.
3. That the appellant was proceeding against, very respectfully, by various presiding officers, but not a single allegation was probed under the law nor was a due course ever adopted.
4. That finally the order impugned, very respectfully, was passed in a very hasty manner and without resorting to the due course of law or affording the appellant any fair chance to defend himself or examine and rebut the evidence produced against him.
5. That the respondent No. 2, very respectfully, without either adopting the due course of law or fulfilling the codal formalities terminated the service of the appellant vide order Endst: No. 2119-2122/ dated 26-03-2012 against the law, rules and

facts and which is not sustainable in the eyes of law. Copy of the order impugned is enclosed as Annexure "B".

6. *That feeling aggrieved the appellant preferred a departmental appeal against the impugned order, but the same was also rejected vide judgement dated 15-02-2016, copy of which was received on 26-02-2016, very respectfully, in the same manner. Copy of the appeal is enclosed as Annexure "C" and that of the judgment as Annexure "D", respectively.*

Grounds:


- a. *That the due course of law, as provided for, has never been adopted in case of the appellant for reasons best known, very respectfully, to the respondents and thus he has not been treated in accordance with the law.*
- b. *That, very respectfully, the golden principles of audi alteram partem have been done away with and the appellant has been condemned as unheard.*
- c. *That the defence version of the appellant has never been considered for reasons not known.*
- d. *That, very respectfully, a complete full dressed inquiry was needed to be conducted to prove the allegations of absenteeism and habitual late coming, but the same was never conducted.*
- e. *That the appellant has not committed any act of commission or omission which may constitute any offence under any law.*

- f. That the appellant has remained jobless throughout the entire period till and is suffering monetarily.
- g. That further grounds will be taken up at the course of the arguments, with the leave of the Honourable Tribunal.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the impugned orders may very kindly be set aside and the appellant reinstated back into service with all consequential / back benefits.

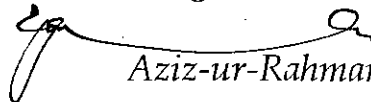
Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Appellant



Muhammad Tahir

Through Counsels,



Aziz-ur-Rahman



Imdad Ullah

Advocates Swat

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2016

Muhammad Tahir Ex-Key Punch Operator / Computer
Operator District Courts at Gulkada, District Swat.

...Appellant

VERSUS

The Honourable Registrar Peshawar High Court,
Peshawar and Others.

...Respondents

AFFIDAVIT

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

Deponent



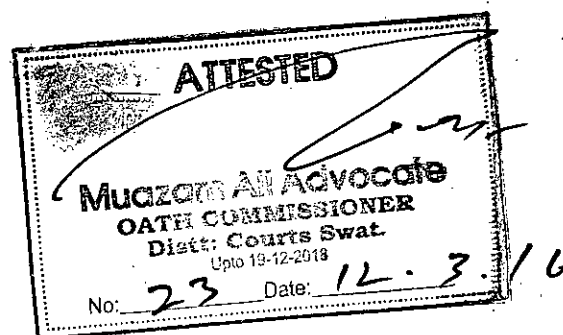
Muhammad Tahir

Identified By:



Imdad Ullah

Advocate Swat



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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2016

Muhammad Tahir Ex-Key Punch Operator / Computer
Operator District Courts at Gulkada, District Swat.

...Appellant

VERSUS

The Honourable Registrar Peshawar High Court,
Peshawar and Other.

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

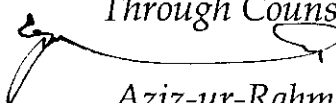
Muhammad Tahir Ex-Key Punch Operator / Computer
Operator District Courts at Gulkada, District Swat.

Respondents:

1. The Honourable Registrar Peshawar High Court,
Peshawar.
2. The District and Sessions Judge / Zilla Qazi
District Swat.

Appellant

Through Counsel,


Aziz-ur-Rahman

Advocate Swat

Annex - 'A'

ORDER

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On the recommendation of Departmental Selection Committee and in the interest of public service, the following candidates are appointed as Computer Operator, (BPS-12), against the vacant posts:

S.No	Name of official
1.	Mr. Ajab Khan
2.	Mr. Muhammad Amin
3.	Mr. Asghar Khan
4.	Mr. Shah Hussain
5.	Mr. Amjad Khan
6.	Mr. Attaullah
7.	Mr. Jawad Ali
8.	Mr. Muhammad Tahir

Annex - 'A'

The above appointments are subject to the following terms and conditions:

- 1) Each appointee shall produce Medical Fitness Certificate before assumption of charge.
- 2) The terms and conditions of his service shall be governed by the NWFP Civil Servants Act, 1973, and all other Laws and Rules applicable to Government Servants.
- 3) He shall remain on probation for the period prescribed by the relevant rules.
- 4) He will be eligible for the continuance and eventual confirmation on the post, on satisfactory completion of period of probation, subject to the availability of permanent post.
- 5) // His service shall be liable to be dispensed with at any time without notice and assigning any reason before the expiry of the period of his probation/extended period of probation, if his work or conduct during the said period is not found satisfactory. In the event of termination from service, he will be given fourteen days notice or in lieu thereof fourteen days pay will be paid to him. In case of resignation, he will give one month notice to the Authority or in lieu thereof one month pay shall be


District & Sessions Judge
Zilla Office Swat

ATTESTED

EXAMINER
Peshawar High Court.

26 MAR 2014

8

forfeited to the Government. The resignation shall, however, be subject to acceptance by the Authority.

- 6) If the above terms and conditions of appointment are acceptable to him, he should report for duty to the undersigned immediately. In case of any appointee failing to report for duty within 7-days, his appointment order shall be deemed to have been cancelled.

o/c *Shah*
District & Sessions Judge/
Zilla Qazi, Swat/Chairman
Departmental Selection Committee
District & Sessions Judge/
Zilla Qazi, Swat.

OFFICE OF THE DISTRICT & SESSIONS JUDGE / ZILLA QAZI, SWAT

Enst: No. 1885-97/E.C.Br Dated: 01/04/2010

Copy forwarded to :

- 1) The Registrar, Peshawar High Court, Peshawar.
- 2) The Senior Civil Judge/ A'ala Illaqa Qazi, Swat.
- 3) The District Comptroller of Accounts, Swat.
- 4) The officials by name.
- 5) Nazir of this Court.
- 6) Incharge Information Center, District Courts Swat.

o/c *Shah*
District & Sessions Judge/
Zilla Qazi, Swat/Chairman
Departmental Selection Committee
District & Sessions Judge/
Zilla Qazi, Swat.

ATTESTED
EXAMINER
Peshawar High Court.
25 MAR 2014

As per record, Mr. Muhammad Tahir, Computer Operator was found guilty absenting himself. so vide letter No. 6379/ E.C.Brh dated 15/10/2011 two annual increments were withheld. Again another judicial officer reported his absence from duty on 13/01/2012 and 14/02/2012. On 21/03/2012 the present judicial officer reported that the official was further found absent on 21/03/2012 with the remarks that the official is habitual late comer and unable to work properly. The official was appointed on 01/04/2010 and is still under probation. This much is sufficient to prove that the official is not taking due interest in his duty and unable to perform his functions properly. Therefore, being on probation his services are hereby terminated with immediate effect.

Dated 26 March. 2012

(Muhammad Ayub Khan)
District & Sessions Judge/
Zila Qazi, Swat.

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILA QAZI, SWAT
Endst. No. 2119-2122 / Dated: 26 / 03 / 2012.

Copy to:-

1. The Senior Civil Judge/ A'ala Illaqa Qazi Swat.
2. The District Comptroller of Accounts Swat.
3. The official concerned by name.
4. Personal file of the official concerned.

(Muhammad Ayub Khan)
District & Sessions Judge/
Zila Qazi, Swat.

ATTESTED
EXAMINER
Peshawar High Court
26 MAR 2014

ATTESTED

Inded
ADVOCATE

Annexure "C"
10

BEFORE THE SUBORDINATE JUDICIARY
TRIBUNAL, PESHAWAR HIGH COURT
PESHAWAR

Departmental appeal No. ____ of 2012

Muhammd Tahir Ex-Key Punch Operator District Court
at Gulkada, District Swat.

...Appellant

VERSUS

The District and Sessions Judge / Zilla Qazi District
Swat at Gulkada.

...Respondent

*Appeal against the order of the respondent bearing
Endst: No. 3526-3527/ dated 21-05-2012 which was
communicated on 25-05-2012, whereby the
departmental representation of the appellant
against the impugned order Endst: No. 2119-2122
dated 26-03-2012 through which the service of the
appellant was terminated, was withheld by
respondent to be sent to the next above authority to
the detriment and violative of the rights of the
appellant.*

PRAYER:

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

ATTESTED

Muled

ADVOCATE

Respectfully Sheweth

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1. That the appellant was appointed as key punch operator on 01-04-2010 on regular basis after fulfillment of all the codal formalities.
2. That the appellant was efficiently performing his duties with utmost zeal and vigor.
3. That the appellant was proceeded against by various judicial officers on allegations of absence and late coming, which charges were never proved as required by law.
4. That the appellant was throughout not given fair chance to defend himself and was placed exparte, to the detriment of the appellant.
5. That even in the period of probation any adverse action against the employee requires the principles of natural justice, as enshrined in the Shariah and law. As per the dicta of the Apex Court of Pakistan it is by now a settled law that the principle of Audi Alterm Partem shall be considered part and parcel of every statute even if specifically excluded. While the impugned order Endst: No. 2119-2122 dated 26-03-2012 these principles have escaped the eyes of the learned competent authority. Furthermore that the period of probation can be extended upto two years if the competent authority so deems proper. Copy is enclosed as annexure "A".
6. That the charges leveled against the appellant have neither been proved and nor corresponds to the punishment awarded.

✓
ATTESTED
M. K. A.
ADVOCATE


7. That non-punctuality attributed to the appellant is a vague and evasive charge, which requires solid proof. Nevertheless the appellant has not committed any act of commission or omission, which may constitute any offence.
8. That the mandatory provisions of law have been violated.
9. That the appellant filed a departmental representation against the impugned order Endst: No. 2119-2122 dated 26-03-2012 through proper channel, but the respondent withheld the same vide order Endst: No. 3526-3527 dated 21-05-2012 to the detriment of the appellant. Copy of the Representation is enclosed as Annexure "B" and that of the order of the respondent as annexure "C".
10. That the appellant is a young and energetic person and is zealous to carry on his duties with utmost vigor.
11. That the appellant has till date never joined any sort of gainfully service / job.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the impugned orders may very kindly be set aside and the appellant

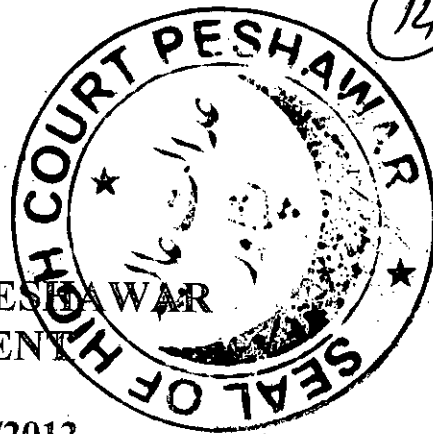
ATTESTED
M. K. S.
ADVOCATE

reinstated into service with all back benefits, as he is a young boy and is expecting a long life to live with the major part of his life in this department.

Appellant
Muhammad Tahir
Through Counsel,
Aziz-ur-Rahman
Advocate Swat

ATTESTED

ADVOCATE.

Annexure-D



JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Departmental Appeal No.10/2012

JUDGMENT

Date of hearing.....15.2.2016.....

Petitioner(s) / *(Muhammad Tahir)* by *Danyal Khan Chamkani*
Advocate

Respondent(s).....

YAHYA AFRIDI, J.- Through the instant

Departmental Appeal, Muhammad Tahir, appellant,

seeks the following prayer:

"It is, therefore, very respectfully prayed that on acceptance of this appeal both the impugned orders may very kindly be set aside and the appellant reinstated into service with all back benefits, as he is a young boy and is expecting a long life to live with the major part of his life in this department."

ATTESTED
EXAMINER
Peshawar High Court
26 FEB 2016

2. In essence, the grievance of the appellant is that he was proceeded against by various Judicial Officers on allegations of *absence from duty* and being a *habitual late comer*, which were never proved, as required by law.

3. It is by now well settled that during probation, the services of a civil servant can be done away with without any prescribed inquiry provided

under the law. However, the only exception being if the allegations against the civil servant are such that would create *stigma* upon the appellant. In such circumstances, the case law which has developed, requires the observance of an inquiry, as provided under the law. In similar circumstances, this Court has thoroughly discussed the point that during the period of *probation*, no notice is required to be given, in W.P.No.3249-P/2014 (Sardar Aminullah Khan..Vs.. Government of KPK). Para-9 of the said judgment reads as under:-

"9. The worthy Apex Court in Agha Salim Khurshid's case(1998 SCMR 1930) had discussed the scope and rights of a 'probationer', such as the present petitioner, in terms that:

"The learned counsel for the appellants has further contended that before terminating their services, the appellants were entitled to notice and that the appointment being statutory in nature, the Federal Government had no power to terminate their service contract. We are unable to subscribe to the above contention of the learned counsel for the appellant. The contract of service, under which the two appellants were appointed, specifically provided that their appointments shall be liable to termination on 3 mnths' notice or 3 months' salary in lieu thereof on either side without assigning any reason. Such a contract, in our view, does not creat any vested right in the appointee so as to make him entitled to notice before termination of the contract of service."

ATTESTED
EXAMINER
Peshawar High Court
26 FEB 2016

.....
.....
(Emphasis provided)."

4. Keeping in view the *dicta* in the
aforementioned decision, the allegation against the
present appellant is of absence without leave, which
does not attach any *stigma* upon the appellant.
Moreover, the impugned order is of *termination*
during his period of probation, which requires no
formal inquiry. In addition to the above, the
termination order of the appellant does not impose
the disability from future employment in
government service.

4. Resultantly, this appeal being devoid of
any merits, is hereby dismissed.

Dt.15.2.2016.

Ed. Vanya Arif J

[Signature]
CERTIFIED TO BE TRUE COPY
[Signature]
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1984
26 FEB 2016

No. 18625
Date of Presentation of Application 26/2/16
No of Pages 30
Copying fee 1
Urgent Fee 60
Total 61
Date of Preparation of Copy 26/2/16
Date Given For Delivery 26/2/16
Date of Delivery of Copy 26/2/16
Received By *[Signature]*

M.Gul

Before the Khyber Pakhtunkhwa Service Tribunal
Peshawar.

Service Appeal No.235/2016

Mr. Muhammad Tahir.....Appellant

Versus

The Registrar, Peshawar High Court, Peshawar and another.

.....Respondents

Para wise comments on behalf of respondents no. 1 & 2.

Preliminary Objections:

1. The appellant has got no cause of action against the respondents.
2. The appeal is badly time barred.
3. The appeal in hand is not maintainable in its present form.
4. That the appellant is estopped by his own conduct to file the present appeal.
5. The appellant has not approached this Hon'ble Court with clean hands.

On Facts:

Para No. 1 to the extent of appointment of appellant as Computer Operator is correct, while rest of the para is incorrect, therefore the same is denied.

On Grounds:

- a. Para "A" of the appeal is incorrect, hence denied. The services of the appellant have been terminated in accordance with relevant Law & Rules.

- b. Para "B & C" are incorrect therefore, denied. Appellant was given reasonable opportunity for his defense but he failed to establish his innocence. The services of the appellant were terminated after fulfillment of all legal formalities in accordance with law, Shariah and precedents of the august Apex Courts in the best interest of justice decency and fair play. Order bearing Endst: No.2119-2122 dated 26/03/2012 is correct, and is based on well-established solid & cogent reasons. The charges leveled against the appellant were duly proved beyond any shadow of doubt.
- c. Para "D" is incorrect hence denied. The appellant was given reasonable opportunity to mend his habits, but he completely failed to reform himself (detail mentioned in para "d" below).
- d. Para "E" is incorrect, hence denied. Infact, the appellant was habitual late comer, having no interest in his official duty. During his posting in the court of Judicial Magistrate Matta, vide letters dated 16/02/2011 & 18/02/2011 (Copies annexure B & B/1) explanations were called from the appellant, but he ignored the same. Later on the Presiding Officer of the court vide letters bearing No.24 dated 11/03/2011 & No.26 dated 12/03/2011 (Copies Ann: C & C/1) requested for taking departmental action against the appellant due to his willful absence from duty. Explanation was called from the appellant vide this office letter No.2070 dated 16/03/2011 (Copy Ann: D), who submitted his reply, which was found unsatisfactory. So vide this office order bearing Endst: No.2228-2231 dated 22/03/2011 (Copy Ann: E), Mr.Zahid Mehmood, the then Additional District & Sessions Judge/Izafi Zila Qazi, Bahrain, was appointed as Authorized inquiry Officer to conduct inquiry against the appellant under N.W.F.P Government Servants (Efficiency & Discipline) Rules 1973. Who after conducting

proper inquiry vide order Endst: No.171 dated 12/08/2011 (Copy Ann: F) awarded minor penalty of withholding two annual increments (with accumulative effect) of the appellant. The same was conveyed to him vide this office letter No.6379 dated 15/10/2011 (Copy Ann: G).

The appellant also remained posted in the court of Civil Judge/Illaqa Qazi-III, Bahrain w.e.f 18/03/2011 to 17/10/2011. The Presiding Officer of the court reported the following adverse remarks against him;

"He is not punctual and devoted whole heartedly towards his official work. He is required to improve his skills of typing."

The said remarks were conveyed to him vide this office letter No.1640 dated 05/03/2012 (Copy Ann: H), but he did not submit his reply.

Vide order bearing Endst: No.6605-6700 dated 17/10/2011 (Copy Ann: I) the appellant was transferred to the court of Civil Judge-XVII now Civil Judge-III Swat. As usual, the appellant repeated his previous habit by absenting himself from court duty without informing the Presiding Officer of the court. He was time & again verbally warned but he did not pay heed, then the Civil Judge-III, Swat, vide letters No.35 dated 14/02/2012 & No.40 dated 28/02/2012 (Copies Ann: J & J/1) approached this office for taking disciplinary action against him. In view of the above complaints, vide letter No.1352 dated 16/02/2012 (Copy Ann: K) his explanation was called. His reply was found unsatisfactory, as it was not supported by valid or genuine reasons.

Lastly, vide order bearing Endst: No.1588 dated 03/03/2012 (Copy Ann: L), he was transferred & posted as Computer Operator to the court of Additional District & Sessions Judge/Izafi Zila Qazi, Matta. Again, the appellant repeated his behavior un-becoming of an official. The learned Additional District & Sessions Judge/Izafi Zila Qazi, Matta, vide letters No.61 dated 21/03/2012 & No.63-64 dated 22/03/2012. (Copies Ann: M & M/1) complained against the appellant due to his unlawful and un-authorized absence from duty and lack of interest in his official duty.

The appellant had already availed several chances for improvement of his skills, to take interest in his job and to mend he could not.

Keeping in view the complaints and explanations called from the appellant and his replies which were found not satisfactory, this office was left with no choice but to proceed against him in accordance with law vide this office order bearing Endst: No.2119-2122 dated 26/03/2012 (Copy Ann: N) and his services were finally terminated.

e. Para "F" needs no comments.

f. Para "G" is irrelevant.

In view of the above cited facts and circumstances, the instant appeal being not maintainable may kindly be dismissed with heavy cost, please.

Encl: As above.

Valled
[Signature]
Government Pleader
Swat
13.7.16

[Signature]
District & Sessions Judge/
Zila Qazi, Swat.
District & Sessions Judge
Swat at Saidu Sharif.

(1) Home the Duff and ...

Copies forwarded in ...

defence that you have ...

otherwise it shall ...

reach to this office within 03 days

and B and E. Your reply must

be taken against you under the

proper disciplinary action may not

You should explain that why

your part being a public servant

negligence and misconduct on

Your this act amounts to gross

to attend your office before 08:30 AM

The Court while you are duty bound

At 11:30 AM you come to

this Court ~~about~~ from your duties.

you ~~checked~~ the attendance register and found

today at 08:30 AM I checked

During the routine checking

Explanation

(20) (15)

Annexure B/1

Annexure C

33 25

No. 24 / JM, Matta, Swat

Dated: 12/03/2011

From
Muhammad Arif Khan
Civil Judge/Judicial Magistrate
Matta, Swat.

COURT OF SENIOR CIVIL
Diary No: 24
* Date: 12/03/11
Sign: [Signature]
A'LA ILAQQA QAZI SWAT

To
The Hon'ble
District and Sessions Judge/
Zila Qazi, Swat

Through: Proper Channel
Subject: DEPARTMENTAL ACTION

590
12-3-11
[Signature]

Respected Sir,

I have the honour to submit that K.P.O Muhammad Tahir, attached to the court of undersign remained absent from his duties on 15th, 18th and 23rd February 2011. His explanations called but he failed to give reply to any explanation.

Today once again he was marked as absent when in the meanwhile at 09:30 A.M he sent an application for two days leave through Barkat Ali P.S. His application was rejected and the said P.S was asked to inform the applicant to immediately attend his duties but K.P.O Muhammad Tahir failed to attend his duties today. Since huge work is pending for typing and the said K.P.O is not interested to perform his duties while the court work is suffering.

It is therefore requested that proper departmental proceedings may please be initiated against him while his substitute may be provided at the earliest in the best interest of justice.

Yours obediently

[Signature] 11/3/2011

(MUHAMMAD ARIF KHAN)
Civil Judge/Judicial Magistrate
Matta, Swat.

No: 667 / AIQ, Swat

Dated: 12/03/2011
Forwarded in original to Hon'ble
District & Sessions Judge/Zilla Qazi,
Swat for further orders, please

Call for the explanation of the
official concerned as to why
despite being called for his work
absent at the court

Senior Civil Judge
A'la Ilaga Qazi, Swat
12 MAR 2011

"Annexure C/1"

(32)

(Handwritten mark)

No: 25 /JM, Matta, Swat

Dated: 12/03/2011

Stamp: District and Sessions Judge, Zila Qazi, Swat. Diary No. 594. Dated 14-3-11.

From: Muhammad Arif Khan
Civil Judge/Judicial Magistrate
Matta, Swat.

To: The Hon'ble
District and Sessions Judge/
Zila Qazi, Swat.

Through: Proper channel.
Subject: DEPARTMENTAL ACTION

Memo:

Kindly refer to my letter No. 25/JM, Matta dated 11/03/2011 on the subject cited above, it is submitted that K.P.O Muhammad Tahir, attached to this court is still absent. His absence was marked in the attendance Register while the court work is badly suffering.

It is therefore requested that the delinquent official may please be proceeded departmentally and his substitute be provided at the earliest so that the court work may not suffer and the assigned targets court be achieved successfully.

Yours Obediently

(Handwritten signature)

(MUHAMMAD ARIF KHAN)
Civil Judge/Judicial Magistrate
Matta, Swat

No. 679 dt. 14/3/2011

Forwarded in original to Hon'ble
DST, Swat for further orders please.

(Handwritten signature)

Senior Civil Judge/
Zila Qazi, Swat
14.3.2011.

Annexure D

31

No. 2070 / E.C.Brh

Dated: 16 / 03 / 2011

From: The District & Sessions Judge/
Zila Qazi, Swat.
P.No. PHC-0031-57-3

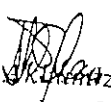
To: Mr. Muhammad Tahir
Computer Operator to the Court of
Judicial Magistrate Matta.

SUBJECT: EXPLANATION

Memo:


You have been reported absent from your duty on 15th, 18th, 20th February and 11th March 2011, without prior permission from the competent authority. Besides, an explanation regarding your absence was also called by your immediate judicial officer but you failed to submit your reply. Your act of wilful absence from duty amounts to negligence and misconduct.

You are, therefore, asked to explain as to why disciplinary action under NWFP Government Servants (Efficiency & Discipline) Rules, 1973, may not be taken against you. Your reply should reach this office within three (3) days, failing which it will be presumed that you have nothing in your defence.


(Shah Jehan Khan)
District & Sessions Judge,
Zila Qazi, Swat.

ORDER

Finding reply to the explanation submitted by Mr. Muhammad Tahir, Computer Operator to the Court of Judicial Magistrate Matta now posted in the Court of Civil Judge/Illaq Qazi-III, Behrian Swat, unsatisfactory, hence Mr. Zahid Mehmood, learned, Additional District & Sessions Judge / Zila Qazi Behrain / Swat is appointed as authorized officer to conduct inquiry against the official concerned under NWFP Government Servants (Efficiency & Discipline) Rules, 1973 and to submit his report to this office, within twenty days.


(Shah Jehan Arif) *Arif*
District & Sessions Judge/
Zila Qazi, Swat.


OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILA QAZI, SWAT.

Endst. No. 2228-2231/11

Dated: 22/7/2011

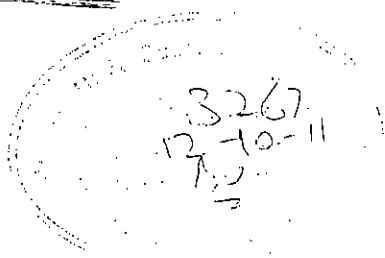
Copy forwarded to:

1. Mr. Zahid Mehmood, learned Additional District & Sessions Judge/Izafi Zilla Qazi Behrain, Swat for information and necessary action.
2. Mr. Muhammad Arif, Judicial Magistrate Matta, Swat.
3. The Official concerned, for information.
4. The Incharge, Information Center Sessions Division, Swat.


District & Sessions Judge/
Zila Qazi, Swat.

Annexure F

From: Zahid Mehmood
Additional District & Sessions Judge,
Izafi Zila Qazi, Swat at Bahrain
As authorized officer



To: The learned District & Sessions Judge/
Zila Qazi, Swat.

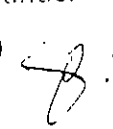
Subject: ISSUANCE OF FORMAL ORDER IN INQUIRY
PROCEEDINGS AGAINST MR. MOHAMMAD TAHIR
COMPUTER OPERATOR

No. 171 AD & S/ IZQ Bahrain (S) dated 12-08-2011

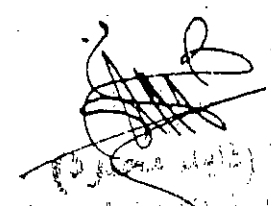
Respected Sir,

Kindly refer to the letter bearing Ends: No. 4561 / E.C Brh dated: 25-06-2011, from the office of your good self on the subject captioned above.

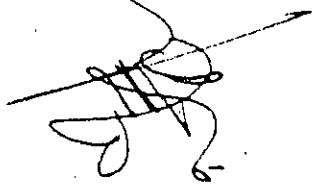
The undersigned has conducted the desired inquiry and submitted report vide letter No. 119 AD & S/ IZQ Bahrain (S) dated 27-05-2011, as with the result that the charges under which the inquiry proceedings were initiated are proved.

Vide office order No. 2228-2231 dated 22-03-2011, the undersigned was designated as authorized officer. Therefore being authorized officer in the inquiry proceedings as charges against the official for his misconduct and inefficiency are proved under section 03(a),(b) of the Govt: Servant E&D Rules 1973, therefore held guilty and keeping ahead the age, the service of the official being not previously charged as such, this formal order to impose minor penalty under section 04 (1), (a) (ii) for holding his two annual increments: is issued, after giving a chance of personal hearing of the official under inquiry, for his negligence as penalty, (with accumulative effect) 

Inquiry proceedings Report for KPO Mohammad Tahir
Dated: 12-07-2011


ایڈیشنل ڈسٹرکٹ و سیشن جج
ایزافہ ذیلا قاضی سوات - 1

Zahid Mehmood
(PHC-0142-71-1)
Additional District & Sessions Judge /
Izafi Zila Qazi, Swat at Bahram
As authorized officer



official present in person and formal order announced.

Submitted for further appropriate orders as desired please

Sections 04 sub-section 01 clause (a) sub-clause (ii)
Government servants (efficiency and discipline) rules
1973 and the powers exercised hereunder.

the service or post;
otherwise then for unfitness for promotion or financial
advancement in accordance with the rules or orders pertaining to
(ii) Withholding, for a specific period, promotion, or increment,

(i) censure;

(a) Minor Penalties;

namely -

4. Penalties. (1) The following are the minor and major penalties.

Annexure G

No. 6379 / E.C.Brh

Dated: 15/10/2011

From: The District & Sessions Judge/
Zila Qazi, Swat.
P.No. PHC0043-57-1

To: ~~Mr. Muhammad Tahir~~
~~Computer Operator to the Court of~~
~~Civil Judge/ Ilaqa Qazi-III, Behrain Swat.~~

SUBJECT: FORMAL ORDER

Memo:

It is to inform you that the learned Additional District Judge/ IZQ Behrain / authorized officer, after conducting inquiry proceeding has found you guilty of the charges levelled against you and has imposed minor penalty under section 04(1), (a) (ii) for holding your two annual increments (with accumulative effect) vide his formal order bearing No.171 dated 12/08/2011 (photocopy attached).

Sd/-
(Muhammad Ayub Khan)
District & Sessions Judge/
Zila Qazi, Swat.

Encl: As above.

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILA QAZI, SWAT

Endst: No. 6380-6386

Dated: 15/10/2011

Copy forwarded to:

1. The learned Additional District Judge/IZQ Behrain / authorized officer, for information.
2. The Senior Civil Judge/ A'ala Ilaqa Qazi, Swat.
3. Mr. Muhammad Arif, Judicial Magistrate Matta Swat.
4. The District Comptroller of Accounts, Swat.
5. The Nazir of this Court.
6. The Civil Nazir to the Court of Senior Civil Judge/ A'ala Ilaqa Qazi, Swat, for necessary action.
7. Personal file of the official concerned.

*Received
J. A. Jib
Subj: Mr. Tahir
Collection Amount
27/10/2011*

Sd/-
District & Sessions Judge/
Zila Qazi, Swat.

Annexure H

No. 1640 / E.C.Brh

Dated: 03/03/2012

2

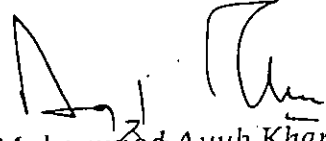
From: The District & Sessions Judge/
Zila Qazi, Swat.

To: Mr. Muhammad Tahir
Computer Operator to the Court of
Additional District & Sessions Judge
Zila Qazi, Swat

SUBJECT: ADVERSE REMARKS IN ACR FOR THE
PERIOD FROM 18/03/2011 TO 17/10/2011.

Memo:

You have been reported by Mr. Sheraz Khan, Civil Judge/
Illaqa Qazi, Behrain Swat, as "He is not punctual and devoted whole
heartedly towards his official work. He is required to improve his skills of
typing." in ACR for the period from 18/03/2011 to 17/10/2011.


(Muhammad Ayub Khan)
District & Sessions Judge/
Zila Qazi, Swat.

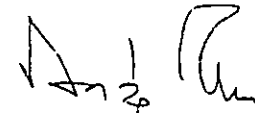
Annexure I

ORDER

In the interest of public service the following transfers / adjustments amongst the ministerial staff of this Sessions Division are hereby ordered with immediate effect:-

BEHRAIN SUBDIVISION			
S.No	Name of official with Designation	Transferred from the Court / Branch	Transferred to the Court / Branch
1.	Mr. Abdul Jalal, Stenographer	Additional District & Sessions Judge/IZQ, Bahrain	Senior Civil Judge/A'nalhllagaQazi, Swat.
2.	Mr. Ali Muhammad, Assistant	Civil Judge/IQ-II, Bahrain (On promotion)	Information Centre, Sessions Division, Swat.
3.	Mr. Abdul Hni Steno Typist	Civil Judge/IQ-XIII, Swat	Additional District & Sessions Judge/IZQ, Bahrain
4.	Mr. Anwar Ali, Steno Typist	Civil Judge/IQ-I-Bahrain	Civil Judge/IQ-II-Swat
5.	Mr. Hussain Ali, Steno Typist	Civil Judge/IQ-II-Swat	Civil Judge/IQ-I-Bahrain
6.	Mr. Abdul Nsir, Computer Operator	Civil Judge/IQ-II-Bahrain	Additional District Judge/IZQ-III, Swat
7.	Mr. Fazalhsan Computer Operator	Additional District & Sessions Judge/IZQ, Bahrain	Additional District & Sessions Judge/IZQ-Matta.
8.	Mr. Akhtar Ali, Computer Operator	CJ/IQ-XII, Swat (New Appointment)	Civil Judge/IQ-II-Bahrain
9.	Mr. Muhammad Tahir, Computer Operator	Civil Judge/IQ-III-Bahrain	Civil Judge/IQ-XVII-Swat
10.	Mr. Anjad Khan, Computer Operator	Civil Judge/IQ-XVII-Swat	Civil Judge/IQ-III-Bahrain
11.	Mr. Ajab Khan, Computer Operator	Civil Judge/IQ-XVI-Swat	Additional District & Sessions Judge/IZQ, Bahrain
12.	Mr. Fazal Rahman, Senior Clerk	Additional District & Sessions Judge/IZQ-III- Swat	Civil Judge/IQ-II-Bahrain
13.	Mr. Jamil-ur-Rahman, Senior Clerk	Civil Judge/IQ-I-Bahrain	Civil Judge/IQ-XIV, Swat.
14.	Mr. Waqar Ali, Senior Clerk	Additional District & Sessions Judge/IZQ-IV, Swat (On promotion)	Civil Judge/IQ-I-Bahrain
15.	Mr. Bakhtyar, Senior Clerk	Civil Judge/IQ-III-Bahrain	Civil Judge/IQ-IX Swat
16.	Mr. Nadar Khan Senior Clerk	District & Sessions Judge/ZillaQazi, Swat. (On promotion)	Civil Judge/IQ-III-Bahrain
17.	Mr. Muhammad Kalim, Junior Clerk	Civil Judge/IQ-II-Bahrain	Additional District & Sessions Judge/IZQ-III-Swat
18.	Mr. Attmullah Junior Clerk	Additional District & Sessions Judge/IZQ-II-Swat	Civil Judge/IQ-II-Bahrain
19.	Mr. Hayat Shah Badshah, Junior Clerk	Civil Judge/IQ-III-Bahrain	Judicial Magistrate-I, Swat
20.	Mr. Muhammad Inam, Junior Clerk	Copy Clerk to the Court of District & Sessions Judge/ZQ, Swat	Civil Judge/IQ-III-Bahrain
21.	Mr. Muhammad Mashir Junior Clerk	Additional District & Sessions Judge/IZQ, Bahrain	Civil Judge/IQ-I Bahrain
22.	Mr. Irfan Khan Junior Clerk	Civil Judge/IQ-I Bahrain	Additional District & Sessions Judge/IZQ, Bahrain
23.	Mr. Azizullah, Naib Qasid	Additional District & Sessions Judge/IZQ-Bahrain-Swat	Additional District & Sessions Judge/IZQ-I-Swat
24.	Mr. Saifullah Khan Naib Qasid	Additional District & Sessions Judge/IZQ-II, Swat	Additional District & Sessions Judge/IZQ-Bahrain-Swat

BEHRAIN SUBDIVISION			
No	Name of official with Designation	Transferred from the Court / Branch	Transferred to the Court / Branch
27	Mr. Rahimullah, Naib Qasid	Civil Judge/IQ-I-Bahrain	Civil Judge/IQ-VIII, Swat.
28	Mr. Muhammad Irshad, Naib Qasid	Additional District & Sessions Judge/IZQ-I-Swat	Civil Judge/IQ-I-Bahrain
29	Mr. Irfanullah, Naib Qasid	Civil Judge/IQ-II-Bahrain	Civil Judge/IQ-IV, Swat.
30	Mr. Rashid Ahmad Naib Qasid	Civil Judge/IQ-IV, Swat.	Civil Judge/IQ-II-Bahrain
31	Mr. Muhammad Ayub Khan, Naib Qasid	Civil Judge/IQ-III-Bahrain	Civil Judge/IQ-XIV, Swat.
32	Mr. Abdur Raziq Naib Qasid	New Appointment	Civil Judge/IQ-III-Bahrain
33	Mr. Murad Ali, Chowkidar	Additional District & Sessions Judge/IZQ-IV-Swat	Additional District & Sessions Judge/IZQ-Bahrain-Swat
34	Mr. Raza Khan, Chowkidar	Additional District & Sessions Judge/IZQ, Bahrain	Additional District & Sessions Judge/IZQ-IV-Swat
35	Mr. Nisar Muhammad Chowkidar	AD&S/IZQ-I, Swat	Civil Judge/IQ-I-Bahrain.
36	Mr. Samiullah, Chowkidar	Civil Judge/IQ-I-Bahrain	Senior Civil Judge/AIQ, Swat
37	Mr. Wali Rahman, Sweeper	Civil Judge/IQ-I-Bahrain	Information Centre, Sessions Division, Swat
38	Mr. Musharraf Maseh Sweeper	Information Centre, Sessions Division, Swat	Civil Judge/IQ-I-Bahrain



 (Muhammad Ayub Khan)
 District & Sessions Judge/
 Zila Qazi, Swat.

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILA QAZI, SWAT

Endst. No. ~~6605~~ ~~6700~~ / E.C. Brh: --- ; --- Dated ~~---~~ ~~---~~ / 17/10/2011.

Copy forwarded to:-

1. All concerned Judicial officers in District Swat.
2. The District Comptroller of Accounts, Swat.
3. The Nazir of this Court, for information and necessary action.
4. The Civil Nazar to the Court of Senior Civil Judge/A'alallaqa Qazi, Swat, for information and necessary action.
5. The Incharge, Information Center, Sessions Division, Swat.
6. The officials concerned for information and immediate compliance, accordingly.
7. Personal files of the officials concerned.


 District & Sessions Judge/
 Zila Qazi, Swat.

Annexure J

No. 35 CJ/IQ-III Swat

Dated: 14/02/2012

To **The Hon'ble District & Sessions Judge/
Zilla Qazi, Swat**

34

From **Muhammad Ishaq Khan
Civil Judge / IQ-III Swat**

339
15/2/12
[Signature]

Through **Proper Channel**

Subject: **DISCIPLINARY ACTION**

R/Sir,

It is humbly submitted that K.P.O. Mr. ~~Muhammad Tahir~~ to the Court of the Undersigned, always remains absent from the Court, who is also habitual late comer & even was marked absent on 13/01/2012. He was verbally directed several times to be on time in the morning regarding which explanation (annexed herewith) was called for, but neither any reply has been submitted nor has he reformed himself, rather the said irresponsible official is again absent today with no intimation to the office in any way, though it is striking 11:00 AM, so is again marked absent in the register, which facts amount to gross misconduct on his part entailing severe punishment.

In view of the above circumstances, the Undersigned is left with no option but to put up the matter before Your Good Self for strict disciplinary action against the said irresponsible official.

[Signature]
(Muhammad Ishaq Khan)
Civil Judge/IQ-III District Swat

OFFICE OF THE SENIOR CIVIL JUDGE / A'ALA ILLAQA QAZI, SWAT

Endst: No. 2/9

Dated: 15/2/2012.

Forwarded in original to the District & Sessions Judge/Zilla Qazi,
Swat.

[Signature]
Senior Civil Judge /
A'ala Illaqa Qazi, Swat

Call explanation
[Signature]

"Annexure J/1"

No 40 CJ/1Q III Swat dated 28/02/12

To

(31)

The Hon'ble Distt & Sessions
Judge / ZQ, Swat

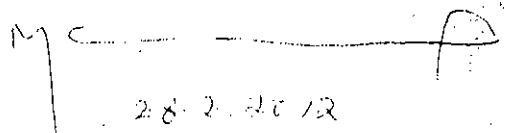
From Through: Profer channel
Muhammad Ashfaq Khan
CJ/1Q III Distt Swat

Subject: Missing Report

R/Six,

It is humbly submitted that APO
Mr. Muhammad Tabir of this court is again
absent today without any due intimation
to the undersigned, though it is striking
10:00 AM, who was also previously reported
to your good self for disciplinary action, who
from your good self office called explanation
but the said official has not mended his
ways, who is again marked absent today in
the register of attendance.

Submitted for your kind perusal & disci-
plinary action against the said official.


28.2.12

No. 1352 / E.C.Br. 13 Dated: 16 / 02 / 2012

35

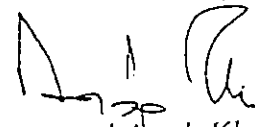
From: The District & Sessions Judge/
Zila Qazi, Swat.

To: ~~Mr. Muhammad Tahir~~
Computer Operator to the Court of
Civil Judge/ Illaqa Qazi-III, Swat.

SUBJECT: EXPLANATION


Memo:
It has been reported by Mr. Muhammad Ishaq Khan, Civil Judge/ Illaqa Qazi-III, Swat vide letter No. 35 dated 14/02/2012, that you are habitual late comer and often absent yourself from official duties. Moreover you were marked absent on 13/01/2012 and 14/02/2012. Besides, you were verbally directed to mend your ways and also an explanation was also called from you but with no reply at your end, which facts amounts to gross misconduct on your part.

You are hereby called to explain as to why disciplinary action should not be taken against you under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Your reply must reach this office within seven (7) days of the receipt of this letter, in case of failure it will be presumed that you have no defence.


(Muhammad Ayub Khan)
District & Sessions Judge/
Zila Qazi, Swat.

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILA QAZI, SWAT

Encl: No. 1353 / Dated: 16 / 02 / 2012.
Copy to Mr. Muhammad Ishaq Khan, Civil Judge/ Illaqa Qazi-III, Swat, with reference to his above referred letter, for information.


District & Sessions Judge/
Zila Qazi, Swat.

Annexure L

ORDER.

In the interest of public service the following transfers/adjustment amongst the ministerial staff of this Sessions Division are hereby ordered with immediate effect:-

S.No	Name of official with designation	Transferred from the Court/Branch	Transferred to the Court/Branch
01	Mr. Fazal Ihsan, Computer Operator	Additional District & Sessions Judge/Izafi Zila Qazi, Matta Swat	Judicial Magistrate, Matta Swat vice No.02
02	Mr. Hamayun Khan, Computer Operator	Judicial Magistrate, Matta Swat	Civil Judge/Illaq Qazi-III- Saidu Sharif Swat vice No. 03
03	Mr. Muhammad-Tahir, Computer Operator	Civil Judge/Illaq Qazi-III-Saidu Sharif Swat.	Additional District & Sessions Judge/Izafi Zilla Qazi, Matta Swat vice No.01

Note:- No TA/DA is allowed.

o/c District & Sessions Judge/
Zila Qazi, Swat.

OFFICE OF THE DISTRICT & SESSIONS JUDGE / ZILA QAZI, SWAT.

Encl: No. 1588-1607/E.C.Brh.

Dated: 03/03/2012.

Copy forwarded to:-

1. The Additional District & Sessions Judge/Izafi Zila Qazi, Matta.
2. The Senior Civil Judge/ Aalla Illaq Qazi, Swat.
3. The Civil Judge/ Illaq Qazi-III-Swat.
4. The Judicial Magistrate, Matta.
5. The Accountant of this Court.
6. The Civil Nazir to the Court of Senior Civil Judge/ Aalla Illaq Qazi, Swat.
7. The Officials concerned for information and immediate compliance accordingly.
8. Personal Files of the officials concerned.
9. The Incharge, Information Centre, Sessions Division, Swat.

o/c (Muhammad Ayub Khan)
District & Sessions Judge/
Zila Qazi, Swat.

No - 81 ASJ Matla

Annexure M

Dated 21-03-2012

43

From:

Additional District and Sessions Judge,
Matla, Suet.

To:

The Hon'ble District and Sessions Judge,
Suet.

Subject: Absence of KPO and connivance
of the Muharrir.

Respected Sir,

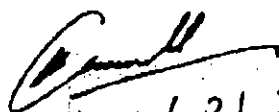
With reference to the subject noted above
it is most humbly submitted that:

- (1) ~~Muhammed Tahir~~, the KPO of this court
is habitual late comer, he is unable to
work properly. He has repeatedly been
advised to mend his ways but in vain.
Today he is absent and even his cell is
not responding.
- (2) While the undersigned was writing this
draft, Arshid Ali Shah, the Muharrir of
this court, submitted the attached application.

(44)

at 12:01 P.M. which is malafide and constitute a misconduct, because the Steno and Reader are repeatedly trying to contact Muhammed Tahir since morning but his cell is not responding. Even the Reader tried after this (attached) application at 12:05 but his cell is not responding.

- (3) So, the salary of Muhammed Tahir for today may be withheld, and disciplinary proceedings may kindly be initiated against both and obliged.


March 21, 2012.

ایڈیشنل سیکشن جگ انصاف سیکشن
مدیرات

(Ann: M/1)

~~Annexure M/1~~

45

OFFICE OF THE IZAFI ZILLA QAZI / ADDL. DISTT. & SESSIONS JUDGE, MATTA SWAT.

No. 63-64 IZO/AD & SJ Matta Swat

Dated: 22-03-2012

From: Syed Anees Badshah Bukhari,
Izafi Zilla Qazi/ AD & SJ Matta, Swat

To: The Hon'ble Zilla Qazi/ District & Sessions Judge,
Swat.

Distt. & Sessions Judge
Diary No. 663
★ Dated 26-03-2012 ★
Sig. *[Signature]*
Zilla Qazi, Swat.

Subject:- ABSENCE OF MOHAMMAD TAHIR COMPUTER OPERATOR.

Dear sir,

I have the honour to submit that in continuation of the undersigned letter No.61/ASJ-Matta, dated 21-03-2012, Mr. Mohammad Tahir Computer Operator is till absent. He telephonically informed the stenographer of this court that he is ill and doctor has advised him bed rest. It is requested that he may be referred to Medical Board, Peshawar for verification of his illness, because since the day first he is posted here he never came to office on time. He is not at all interested in the job. So disciplinary action according to law may kindly be initiated.

It is requested that another Computer operator may be deputed. It is further solicited that keeping in view the heavy pendency in Matta court, increasing numbering of institution another steno may also be given and obliged.

(SYED ANEES BADSHAH BUKHARI)
Izafi Zilla Qazi/ AD & SJ Matta, Swat

Copy forwarded to Mr. Mohammad Tahir Computer Operator, in the court of Izafi Zilla Qazi/ Addl. Distt. & Sessions Judge Matta, Swat.

(SYED ANEES BADSHAH BUKHARI)
Izafi Zilla Qazi/ AD & SJ Matta, Swat

Amesbury N.H.

46

OFFICE ORDER

As per record, Mr. Muhammad Tahir, Computer Operator was found guilty absenting himself, so vide letter No. 6379/ E.C. Bih dated 15/10/2011 two annual increments were withheld. Again another judicial officer reported his absence from duty on 13/01/2012 and 14/02/2012. On 21/03/2012 the present judicial officer reported that the official was further found absent on 21/03/2012 with the remarks that the official habitual late comer and unable to work properly. The official was appointed on 01/04/2010 and is still under probation. This much is sufficient to prove that the official is not taking due interest in his duty and unable to perform his functions properly. Therefore, being ~~terminated~~ his services are hereby terminated with immediate effect.

Dated 26 March, 2012

(Muhammad Ayub Khan)
 District & Sessions Judge
 Zila Qazi, Swat

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILA QAZI, SWAT

Copy for:-
 The Senior Civil Judge/A'ala Ilaga Qazi Swat
 The District Comptroller of Accounts Swat
 The official concerned by name.
 Personal file of the official concerned.

(Muhammad Ayub Khan)
 District & Sessions Judge
 Zila Qazi, Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 235 of 2016

Muhammad Tahir.

...Appellant

VERSUS

The Registrar Peshawar High Court and Others.

...Respondents

REJOINDER BY THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law, rules and facts, hence 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 jurisdictions.

On Facts:

Para 1 of the comments as drafted is vague, evasive and in need of proof, hence is denied specifically.

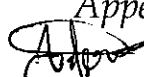
On Grounds:

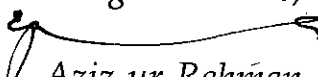
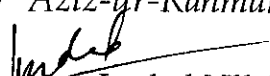
- a. Ground a of the comments as drafted is incorrect, vague, evasive and against the law and rules on the subject, hence is denied specifically. Moreover the probation period of the appellant has ended and by the operation of law the appellant has become*

permanent employee and in which case a full dressed inquiry was mandatory under the law and rules on the subject.

- b. Ground b of the comments as drafted is self-contradictory as the very order impugned is clear that no chance of defence or hearing has been afforded to the appellant, hence the para is specifically denied.
- c. Ground c of the comments as drafted is devoid of merits and in need of evidence, hence is denied.
- d. Ground d of the comments as drafted is irrelevant as the same relates to past and closed transactions and for which the appellant has been penalized and is irrelevant as for as the present issue is concerned, hence the par is denied specifically.
- e. Ground e of the comments as drafted amounts to admission, hence needs no comments.
- f. Ground f of the comments as drafted also being admission, therefore, needs no comments.

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

Appellant

Muhammad Tahir
Through Counsels,


Aziz-ur-Rahman

Imdad Ullah
Advocates Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 235 of 2016

Muhammad Tahir.

...Appellant

VERSUS

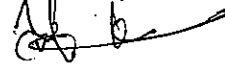
The Registrar Peshawar High Court and Others.

...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 Tahir

Identified By:


Imdad Ullah
Advocate Swat

ATTESTED

