

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

14/2/24

Service Appeal No. 2209/2023

Mr. Muhammad Adnan, Ex-Senior Scale Stenographer,Appellant


VERSUS

Chief Secretary, Khyber Pakhtunkhwa & OthersRespondents

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Dated: 30.01.2024


Appellant
CNIC No: 17301-6272682-3
Contact No: 0315-5737137

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2209/2023

Muhammad Adnan, Ex-Senior Scale Stenographer,
Establishment & Administration Department, Govt;
of Kyber Pakhtunkhwa, Peshawar.....

Appellant

VERSUS

1. The Govt of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary Govt of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
3. The Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary to Govt of Khyber Pakhtunkhwa, (E&SE) Department, Civil Secretariat, Peshawar.

Respondents

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 10944
Dated: 1-2-2024

Parawise comments for/on behalf of the Respondents No. 1 to 4.

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action against the respondents.
2. The appellant is stopped by his own conduct to file the present appeal in the Court.
3. That the appeal of the appellant is time barred.
4. That the appellant has not come to this Honorable Court with clean hands and has concealed material facts from this Honorable Court.
5. The appellant has suppressed and twisted the facts with malafide intention for his own benefit.

Respectfully Sheweth,

ON FACTS


1. Pertains to record, hence, no comments.
2. Pertains to record, hence, no comments.
3. Pertains to record, hence, no comments.
4. Pertains to record, hence, no comments.
5. **Incorrect:** Rule-11(1) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 stipulates that "where any witness is produced by one party, the other party shall be entitled to cross examine such witness" (Annex-I). In the instant case no witness was produced by any party; therefore, claim of the appellant for not giving him opportunity of cross-examination is baseless.


- 6. **Incorrect:** The competent authority tentatively recommended major penalty of dismissal from service in the Show Cause Notice. However, the appellant could not satisfy the competent authority in his reply to the Show Cause Notice; therefore, the competent authority after having considered facts of the case, defense offered by the appellant, findings of the Inquiry Officer and recommendations of Personal Hearing Officer imposed major penalty of Removal from Service.
- 7. **Correct** to the extent that the competent authority removed the appellant from service after fulfilment of all codal formalities.
- 8. **Correct** to the extent that the appellant submitted an appeal to Appellate Authority. Being its discretion to decide and the appeal being devoid of merit was turned down.
- 9. **No comments.**

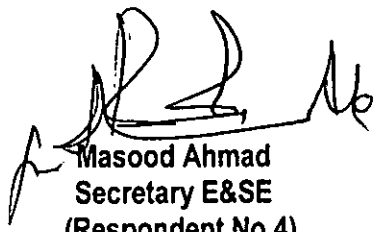
GROUND OF APPEAL

- A. **Incorrect:** The appellant was treated in accordance with true spirit of law/rules. He was proceeded under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011.
- B. As explained in Para-5 of the facts.
- C. **Incorrect:** In the instant case charge against the appellant was proved therefore, the competent authority has the discretion under Rule-14(5)(ii) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 (**Annex-II**) to impose anyone or more penalties, keeping in view the findings and recommendations of the inquiry Officer, facts of the case and defense offered by the accused.
- D. **Incorrect:** Though issuance of posting/transfer orders of the Subject Specialist is the domain of Secretary Elementary & Secondary Education but in the instant case the powers of Secretary Elementary & Secondary Education was misused and fake posting/transfer orders was issued by the appellant.
- E&F **Incorrect:** The appellant was given opportunity of personal hearing by Inquiry Officer on 09.01.2023 (**Annex-III**) as well as by the competent authority on 08.06.2023 (**Annex-IV**), hence stance of the appellant is baseless.
- G. **Incorrect:** The appellant was treated as per law and rules after fulfilment of all codal formalities by the competent authority, hence no violation of law and rules has been made.
- H. **Incorrect:** The appellant was treated as per law and rules and he was given full opportunity during the course of inquiry to defend himself and was heard in person.
- I. The respondents seek permission to raise additional grounds at the time of arguments.

It is, therefore, respectfully prayed that the appeal of the appellant may be dismissed with costs based on presumption and being illegal and malafide.

for 
Nadeem Aslam Chaudhary
Chief Secretary, Khyber Pakhtunkhwa
(Respondent No.1 & 2)
 Through
Kaleem Ullah Baloch
Special Secretary Establishment

for 
Shahid Ullah Khan
Secretary Establishment
(Respondent No.3)
 Through
Kaleem Ullah Baloch
Special Secretary Establishment


Masood Ahmad
Secretary E&SE
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Service Appeal: 2209/2023

Mr. Muhammad Adnan, Ex-Senior Scale Stenographer**Appellant**

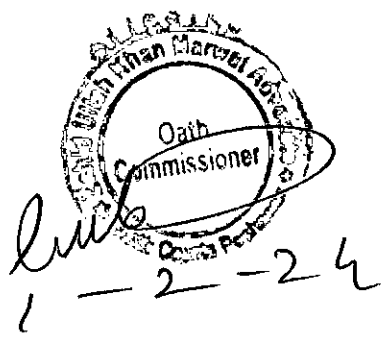
VERSUS


Chief Secretary Khyber Pakhtunkhwa & Others**Respondents**

AFFIDAVIT

I, Kaleem Ullah Baloch, Special Secretary Establishment Department do hereby solemnly affirm and declare on that oath contents of the accompanying parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal. It is further stated an oath that in this appeal the answering respondents have neither been place ex-party nor their defense has been struck off.

DEPONENT


1-2-24


for **Shahid Ullah Khan**
Secretary Establishment
Through
Kaleem Ullah Baloch
Special Secretary Establishment
Contact: 0346-8853313




GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Judicial Wing)

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AUTHORITY LETTER

Mr. Riaz Khan, Superintendent (Litigation-III Section) Establishment Department is hereby authorized to submit Affidavit to The Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 2209/2023 titled as "**MUHAMMAD ADNAN, EX-SENIOR SCALE STENOGRAPHER VS GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS**" on behalf of The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa and others being respondents.


for Nadeem Aslam Chaudhry
Chief Secretary Khyber
Pakhtunkhwa
Through
Kaleem Ullah Baloch
Special Secretary
Establishment

absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. Procedure to be followed by competent authority where inquiry is necessary.

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

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

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

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

11. Procedure to be followed by the Inquiry Officer or Inquiry Committee.

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



*Atte to /
Any / SMD dt BSA*

(14)(ii)

submit additional defence in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;

- (c) provide a copy of the inquiry report to the accused; and
- (d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defence offered by the accused during personal hearing, by an order in writing-

- (i) exonerate the accused if charges have not been proved; or
- (ii) impose any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee [7subject to sub-rule (7) of rule 11].

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. **Personal hearing.**—The competent authority may, by an order in writing, call the accused and the departmental representative, alongwith relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

⁷ Words inserted vide notification No.SO(Reg-VI)E&AD/2-6/2010 dated 18.7.2012

A. K. Singh
My



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)

Email: soeiiisection@gmail.com

No. SOE-III (E&AD)3-4/Inquiry/2023
Dated Peshawar the 04th January, 2023

091-9210524

To

Muhammad Adnan, Senior Scale Stenographer (BS-16),
E-IV Section, Establishment Department.
Contact No. 0300-9096422

SUBJECT: PERSONAL HEARING

The Competent Authority / Chief Secretary Khyber Pakhtunkhwa has appointed the undersigned as Inquiry Officer to conduct inquiry against you.

2. To proceed further with the inquiry, you are directed to appear before the undersigned on 9th January, 2023, at 02:00PM for personal hearing.

Attor Fed
MV

(ABDUL HAQ)
(SECTION OFFICER (E-III)/
INQUIRY OFFICER)



Annex-IV

IMMEDIATE

OFFICE OF THE CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Tel: 091-9210683
Fax: 091-9210447

No. AS Staff / CS / KP / 2-3 / 2023 / 81-83 Dated Pesh: the 08th June, 2023

To

Muhammad Adnan,
Senior Scale Stenographer (BS-16),
Establishment Department,
Khyber Pakhtunkhwa,
Contact No.0300-9096422


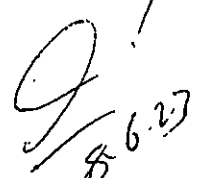
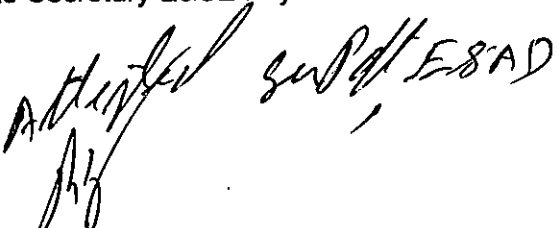
Subject:- PERSONAL HEARING

I am directed to refer to the subject captioned above and to state that under Rule-15 of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011, personal hearing in connection with inquiry is scheduled to be held on 14.06.2023 (Wednesday) at 1100 hours in Office of the Additional Secretary (Staff) to Chief Secretary, Khyber Pakhtunkhwa.

2. You are, therefore, requested to attend the aforesaid office for personal hearing on due date & time, positively.


PA to Additional Secretary (Staff)
Chief Secretary Office
08-06-2023

C.C:-


8.6.23
1. PS to Secretary Establishment Khyber Pakhtunkhwa
2. PS to Secretary E&SE Khyber Pakhtunkhwa

8.6.23

Attended by PS to E&SE

(with the request to depute a well conversant officer from your departments to attend Personal Hearing on said date & time, please)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(Policy)/E&AD/Misc/2020

Dated Peshawar, the December 24, 2020

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To

1. The Director STI, E&A Department.
2. All Additional Secretaries in E&AD.
3. All Deputy Secretaries in E&AD.
4. All Section Officers in E&AD.
5. The Estate Officer/Programme Officer (Computer Cell) in E&AD.

Subject: SIGNING OF PARAWISE COMMENTS ETC IN SERVICE APPEALS.

Dear Sir,

I am directed to refer to this Department letter No.SOR-VI/E&AD/1-23/2005 dated 12-01-2008 (copy enclosed) on the subject, the Competent Authority has been pleased to authorize the Special Secretary (Establishment) Establishment Department to sign the para-wise comments in cases of service appeals filed by the Civil Servants before the Khyber Pakhtunkhwa Service Tribunal on behalf of Chief Secretary, Khyber Pakhtunkhwa and Secretary, Establishment Khyber Pakhtunkhwa.

Yours faithfully,

SECTION OFFICER (POLICY)

ENDST: NO. & DATE EVEN

Copy forwarded to:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Law Department
2. Registrar Peshawar High Court Peshawar.
3. Advocate General Khyber Pakhtunkhwa, Peshawar.
4. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
5. PS to Chief Secretary, Khyber Pakhtunkhwa
6. PS to Secretary Establishment, Khyber Pakhtunkhwa
7. PS to Special Secretary (Establishment) Establishment Department
8. PS to Special Secretary (Reg). Establishment Department.

SECTION OFFICER (POLICY)