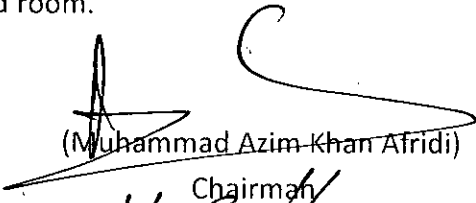


S.No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
----------------------	-------------------------------	---

1	2	3
---	---	---

	16.03.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u> <u>CAMP COURT ABBOTTABAD</u> <u>SERVICE APPEAL NO. 60/2016</u></p> <p style="text-align: center;"><u>(Nisar Ahmed-vs- Secretary to Govt. of Khyber Pakhtunkhwa, Local Govt. Election and Rural Development Department, Peshawar and two others)</u></p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u> Appellant with counsel and Mr. Gul Mir, Court Clerk alongwith Mr. Muhammad Saddique, Senior Government Pleader for respondents present. Arguments on maintainability of appeal heard and record perused.</p> <p>The appellant is admittedly employee of Gilyat Development Authority (GDA) Abbottabad which is an Autonomous Body and the appellant is, therefore, not a civil servant within the meaning of section-2(b) of Khyber Pakhtunkhwa Civil Servants Act, 1973. According to Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, a civil servant aggrieved of any final order is authorized to prefer appeal before this Tribunal in the prescribed manners. Since the appellant is not a civil servant as such appeal of the appellant is not found maintainable under section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with section-2(b) of Khyber Pakhtunkhwa Civil Servants Act, 1973. The same is, therefore, dismissed in limine. File be consigned to the record room.</p> <div style="text-align: right;">  (Muhammad Azim Khan Afridi) Chairman 16.03.16. </div> <p><u>ANNOUNCED</u> 16.03.2016</p>
--	------------	---

17.02.2016

Counsel for the appellant present and heard. The appellant has impugned orders passed by Gilyat Development Authority a body created under Act-7 of 1996. The question as to whether the appellant is a civil servant within the meaning of Section-2(b) of Civil Servants Act, 1973 would require determination.



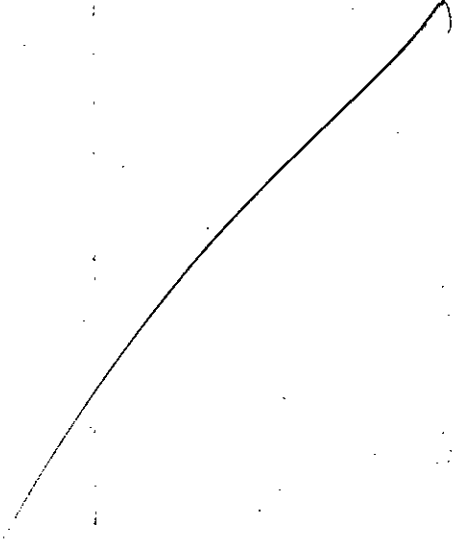
Let pre-admission notice be issued to the respondents for 16.3.2016 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____


Case No. 60/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.01.2016	<p>The appeal of Mr. Nasir Ahmad resubmitted today by post Through Mr. Abdul Aziz Tanoli Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to Touring Bench A.Abad for preliminary hearing to be put up thereon <u>17-02-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Nasir Ahmad son of Khalid Pervaiz Tracer GDA A.Abad received today i.e. on 29.12.2015 is returned to the counsel for the appellant with the direction to submit four spare copies/sets of the memorandum of appeal along with annexures i.e. complete in all respect within 10 days.

No. 2024/S.T,

Dt. 30/12/2015.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Abdul Aziz Khan Tanoli
Advocate High Court A.Abad.

*original appeal received on 7-1-2015
the same is re-submitted after removal
of objection on 14-1-2016 one original appeal
and 4 spare copies*

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

Service Appeal No. 60 /2016

Nisar Ahmed son of Khalid Pervaiz, Ex. Tracer, Gilyat Development Authority (GDA), Abbottabad, resident of C/o Muhammad Mahroof House No. IV-6, Magistrate Colony, Tehsil & District Abbottabad.

...APPELLANT

VERSUS

Secretary to Govt. of Khyber Pakhtunkhwa Local Govt. Election & Rural Development Department Peshawar and others.

....RESPONDENTS

SERVICE APPEAL

INDEX

S.#	Description	Page No.	Annexure
1.	Service Appeal	1 to 7	
2.	Copy of show cause notices	8 to 9	"A" & "B"
3.	Copy of reply to both the show cause notices	10 to 13	"C" & "D"
4.	Copy of impugned order	14 to 15	"E"
5.	Copy of departmental appeal	16 to 23	"F"
6.	Copy of departmental appeal and postal receipts	- 24 -	"J"
7.	Wakalatnama	25	

...APPELLANT

Through;

Dated: 26-12/2015

(ABDUL AZIZ TANOLI)
Advocate High Court, Abbottabad

Notes: copies for

*Respondents Submitted
after Admonition =*

1

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

N.W.F. Province
Service Tribunal
Diary No. 1537
Dated: 29-12-2015

Service Appeal No. 60 /2016

Nisar Ahmed son of Khalid Pervaiz, Ex. Tracer, Gilyat Development Authority (GDA), Abbottabad, resident of C/o Muhammad Mahroof House No. IV-6, Magistrate Colony, Tehsil & District Abbottabad.

...APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa Local Govt. Election & Rural Development Department Peshawar.
2. Director General G.D.A Abbottabad.
3. Deputy Director (Admn) G.D.A Abbottabad.

....RESPONDENTS

Filed to-day
15/11/16
Registrar

re-submitted to-day
and filed;

15/11/16

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ORDER NO. GDA/P-F/1527-30/ADMN DATED 03/08/2015 ISSUED BY THE RESPONDENT NO. 2, WHEREBY IMPOSED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE UNDER E&D RULES

KPK 2011 AGAINST APPELLANT WITHOUT
CONDUCTING OF REGULAR INQUIRY OR
COMPLIANCE OF OTHER CODAL FORMALITIES.

PRAYER: ON ACCEPTANCE OF THE INSTANT
APPEAL, THE IMPUGNED ORDER DATED
03/08/2015 MAY VERY KINDLY BE SET-ASIDE
AND THE RESPONDENTS MAY PLEASE BE
DIRECTED TO REINSTATE THE APPELLANT IN
HIS SERVICE WITH ALL BACK BENEFITS. ANY
OTHER REMEDY WHICH THIS AUGUST
TRIBUNAL DEEMS FIT MAY ALSO BE AWARDED
IN FAVOUR OF APPELLANT.

Respectfully Sheweth: -

Following are the facts, giving rise to the instant appeal;-

1. That the appellant is the employee of respondents and has served the respondents/department as a Tracer in BPS-5 for more than 09 years before dismissal.

2. That the whole period of service of the appellant is quite clear and no complaint against the appellant except the present fabricated allegation mentioned in the show cause notice.
3. That respondent No. 2 issued two show cause notice to the appellant on the same day and on the basis of same allegations vide letter No. PF-9114 dated 31/12/2014 and No. 9451 dated 31/12/2014. Copy of show cause notices are annexed as Annexure "A" & "B".
4. That the appellant submitted detailed parawise reply to the show cause notice alongwith relevant record, wherein the appellant through his reply denied the allegation of respondent and proved through record, that allegation leveled against the appellant is baseless and without any cogent evidence. Copy of reply to both the show cause notices is annexed as Annexure "C" & "D".
5. That respondent No.2 after long delay of 08 months without examining the record, reply of the appellant and without considering 09 years regular

service of the appellant, ^{without} compliance of codal formalities which was necessary, illegally, against the law, with malafide intention on the basis of predetermined mind dismissed the appellant ~~from~~ from his service vide order No. GDA/PF/1527-30 Admn dated 03/08/2015. Copy of impugned order is annexed as Annexure "E".

6. That the appellant being feeling aggrieved from the impugned order dated 03/08/2015 field departmental appeal before respondent No.1 but no reply has been received so far hence, the present appeal on the following grounds against the other;
-. Copy of departmental appeal is annexed as Annexure "F".

GROUND:-

- a. That there is no evidence against the appellant before the respondents moreover, the appellant has never did an act which amounts to misconduct or violation of any prevailing concerned laws, hence, the

impugned order is not sustainable in the eye of law and liable to be set-aside.

- b. That the appellant was not treated in accordance with law and rules by the respondents/ department on the subject noted above and as such the respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973, hence the impugned order of respondent is not sustainable in the eye of law and liable to be set-aside.
- c. That the impugned order dated 03/08/2015 is against the law, facts and norms of natural justice and material available on the record, hence, not sustainable and liable to be set-aside.
- d. That respondents had not adopted any codal formalities and even did not issued any final show cause notice or personal

hearing, hence, the impugned order is liable to be set-aside.

- e. That the respondent No.2 without holding inquiry permissible under law, without any sufficient evidence, grounds and without applying judicial mind passed impugned order of dismissal of appellant from service. Moreover serious nature of allegation leveled against the appellant needed to be inquired into through a regular inquiry but authority / respondent did not consider such fact and arbitrarily dispensed with the regular inquiry furthermore, appellant was also condemned unheard as no opportunity of personal hearing was given to the appellant, hence in impugned order is being illegal without lawful authority liable to be set-aside.

It is therefore, humbly prayed that on acceptance of the instant appeal, the impugned order dated 03/08/2015 may very kindly be set-aside and the respondents may please be directed to reinstate the appellant in his service with all back benefits. Any other remedy which this august tribunal deems fit may also be awarded in favour of appellant.

...APPELLANT

Through;

Dated: 26-12-2015

(ABDUL AZIZ TANOLI)

Advocate High Court, Abbottabad

VERIFICATION: -

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

...APPELLANT

Ann-I

46

A

8



Galiyat Development Authority, Abbottabad

Government of Khyber Pakhtunkhwa

PH: 0992-9310240, Fax: 0992-331535

Email: gdaatd@gmail.com

No. GDA/PR/19414 /Admn:

The Dated 31/12/2014

To,

MR. NISAR AHMAD,
Tracer, Galiyat Development Authority,
Abbottabad.

Subject: **SHOW CAUSE NOTICE**

Whereas, you named above was directed vide Office Order bearing No. GDA/Office Order/4034-38/Admn:/2013, dated 18th November, 2013 and Office Order bearing No. GDA/Office Order/7481-84/Admn; dated 9th May, 2014 to demarcate the encroachments and to place the correct and updated position of encroachments and properties falling in the right of way, before the Competent Authority. But, you deliberately did not demarcate the encroachments, therefore, disobeyed the lawful order of the Competent Authority. You have also intentionally concealed the fact that allotment of land for Fog Land Hotel, Mochidhara, Nathiagali had not been approved/concurred by the Provincial Government, and illegal occupier of Fog Land Hotel was not entitled to any permission to construct the Hotel Building on alternate site, in the wake of the Hon'ble Chief Minister's directive to allocate alternate sites to the affected allottees. Due to your willful concealment, the illegal occupier of Fog Land Hotel constructed hotel building on alternate site, with your active connivance and collusion.

Your above mentioned act tantamount to gross misconduct and renders you liable to be proceeded against under the relevant law. Since, record establishes your willful and deliberate acts of concealment of facts, and disobedience of lawful orders, therefore, feeling no need to order inquiry, you are directed to submit your written defence within seven (07) days of the receipt of this notice, positively, failing which you will be proceeded against, ex-parte.

attested
[Signature]

[Signature]

DIRECTOR GENERAL
GALIYAT DEVELOPMENT AUTHORITY
ABBOTTABAD

~~Annex-J~~

(47)

B

(9)



Galiyat Development Authority, Abbottabad

Government of Khyber Pakhtunkhwa

Ph: 0992-9310240, Fax: 0992-331535

Email: gdaatd@gmail.com

No. GDA/ 9451 /Admn:

Dated 31-12/2014

To,

MR. NISAR AHMAD

Tracer, Galiyat Development Authority,
Abbottabad.

Subject:

SHOW CAUSE NOTICE

Whereas, you named above misguided the Anti-encroachment Team, when the Team reached "Saba Dreams Hotel", Ayubia for removal of illegal construction on land belonging to GDA. You willfully and knowingly informed the Team that there was no encroachment on GDA land, and that the Hotel was holding possession of the area duly allotted. But, when the Team undertook the measurements by itself, the covered area of Hotel came out to be about 11 Marlas against the allotted area of 5 Marlas.

Similarly, you intentionally and deliberately misled the Anti-encroachment Team in the case of Lalazar Hotel, Ayubia, where the Hotel Management was found encroaching upon 5 Marlas land in excess against the allotted land, but you had informed the Team that the Hotel was not holding any excess land.

You have also willfully concealed the encroachment of Al-Azim Hotel, where the Management of the Hotel was found encroaching upon an area of more than 1 Kanal by damaging the Green Belt by concrete work, illegally and without any sanction.

You have also been found disobedient to comply with the lawful orders of the Competent Authority to perform your duties, duly assigned, particularly, the affairs of Building Control Agency (BCA) and to submit timely reports of construction activities to your seniors, which is a clear evidence of your connivance extended to the land grabbers, land mafia and encroachers, and speak loud that you have joined hands with them.

Your above willful and deliberate acts and omissions tantamount to gross misconduct and render you liable to be proceeded against under the relevant law. Since, the record and personal observations of the undersigned establish your willful and deliberate acts, therefore, feeling no need to order inquiry, you are directed to submit your written defence within seven (07) days of the receipt of this notice, positively, failing which you will be proceeded against, ex-parte.

attested
[Signature]

[Signature]

DIRECTOR GENERAL
GALIYAT DEVELOPMENT AUTHORITY
ABBOTTABAD

~~Annex K~~

48

To

The Director General,
Galiyat Development Authority,
Abbottabad

C 10

Subject: SHOW CAUSE NOTICE

With reference to show cause notice No.GDA/PF/9414/ Admn: dated: 31-12-2014, As desired statement / record in respect of defense to subject notice is as under:-

<p><u>Para.1 of show cause notice (reproduced)</u></p> <p>Whereas, you named above was directed vide Office Order bearing No.GDA/Office Order/4034-38/Admn:/2013, dated. 18th November, 2013</p>	<p><u>Statement</u></p> <p>Admitted that office order bearing dispatch No. /4034-38/Admn:/2013, dated.18th November, 2013 under your kind signature was issued and received at that time.</p>
<p><u>Para.2 of show cause notice (reproduced)</u></p> <p>office order No.GDA/Office Order/7481-84/Admn:, dated. 9th May, 2013, to demarcate the encroachments and to place the correct and updated position of encroachments and properties falling in the right of way, before the Competent Authority</p>	<p><u>Statement</u></p> <p>Admitted that office order bearing dispatch No.GDA/Office Order/7481-84/Admn: dated. 9th May, 2013. under the signature of Dy. Director (Admn:), was issued and received, and responsibility to the extent of capacity and fulfilled under the kind direction of the officer in-charge</p>
<p><u>Para.3 of show cause notice (reproduced)</u></p> <p>But you deliberately did not demarcate the encroachments therefore, disobeyed the lawful orders of the Competent Authority. You have also initially concealed the fact that allotment of land for Fog Land Hotel, Mochidhara Nathia Gali had not been approved / concurred by the Provincial Government, and illegal occupier of Fog Land hotel was not entitled to any permission to construct hotel building on alternate site, in the wake of the Hon'ble Chief Minister's directive to allocate alternate sites to the affected allottees. Due to your willful concealment, the illegal occupier of fog land hotel constructed hotel building on alternate site, with your active connivance and collusion.</p> <p style="text-align: right;"><i>Attested</i> <u>Am</u></p>	<p><u>Statement / record</u></p> <p>We have performed our assigned duty and delivered services where and when order during the operation by the officer in-charge. Fog land hotel site was also demarcated and marked the required width of the road along with other buildings as per spot instruction. As regards facts regarding Fog land hotel were not conceived but the hotel was reconstructed at present site (alternate site) due to the following facts:</p> <ol style="list-style-type: none"> 1. Record file pertained to the property was with NAB due to which cancellation of the property was hidden. 2. The allottee has also not disclose the facts. 3. Further we think that order for giving alternate site was placed after having complete information regarding the status of the property. We therefore have no option except compliance of the order of our superiors

Para.3 of show cause notice (reproduce)

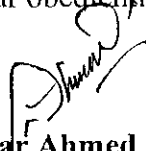
Your above mentioned act tantamount to gross misconduct and renders you liable to be proceeded against under the relevant law. Since, record establishes your willful and deliberate acts of concealment of facts; and disobedience lawful orders, therefore, feeling no need to order inquiry, you are directed to submit your written defense within seven (07) days of the receipt of this notice, positively, failing which you will be proceeded against, ex-parte.

11

49

Keeping in view my duty as per designation (Tracer), it is requested that I may not be treated at par with my superiors and statement given in my defense above may please be considered sympathetically and further proceeding may please be stopped.

Your obediently,



Nisar Ahmed (Tracer)
Galiyat Development Authority
Abbottabad.

Dated:06.01.2015

attested
An

To

The Director General,
Galiyat Development Authority,
Abbottabad

12

D

Subject: SHOW CAUSE NOTICE

With reference to show cause notice No.GDA/PF/9451/ Admn: dated: 31-12-2014, As desired statement / record in respect of defense to subject notice is as under:-

<p><u>Para.1 of show cause notice (reproduced)</u></p> <p>When the team reached "Saba Dream hotel" Ayubia for removal of illegal construction on land belonging to GDA. You willfully and knowingly informed the team that there was no encroachment on GDA land, and that the hotel was holding possession of the area duly allotted. But, when the team under took the measurements by itself, the covered area of hotel came out to be about 11 Marlas against the allotted area of 5 Marlas</p>	<p><u>Statement in defense with supporting record</u></p> <p>We have already reported the encroachment and violation as per detail below:</p> <p>Saba dream hotel.</p> <p>1. An area measuring 415 sq yards (encroachment) reported vide list of plots/ property at Ghoradhakka showing the encroachment at S.No.27 Column.7 (Anx: "A")</p> <p>2. Measurement taken at spot with I/O NAB, and submitted to PHC by NAB, namely <u>Reflected in report for Chief justice, Peshawar High Court Peshawar inspection of Galiyat Region</u> vide S.No.12 /iii /a (Anx: "B")</p>
<p><u>Para.2 of show cause notice (reproduced)</u></p> <p>Similarly you intentionally and deliberately misled the anti-encroachment Team in the case of Lalazar hotel Ayubia, Where the hotel management was found encroaching upon 5 Marlas land in excess against the allotted land, but you had informed the team that the hotel was not holding any excess land.</p>	<p><u>Statement in defense with supporting record</u></p> <p>Lalazar Hotel.</p> <p>1. Measurement taken at spot with I/O NAB, and submitted to PHC by NAB, namely <u>Reflected in report for Chief justice, Peshawar High Court Peshawar inspection of Galiyat Region</u> vide S.No.12 /iii /b (Anx: "C")</p> <p>2. An area measuring 415 sq yards (encroachment) reported vide-list of plots/ property at Ghoradhakka showing the encroachment at S.No.27 Column.7 (Anx: "D")</p>
<p><u>Para.3 of show cause notice (reproduced)</u></p> <p>you have also willfully concealed the encroachment of Al Azim Hotel, where the Management of the hotel was found encroaching upon an area of more than one kanal by damaging the green belt by concrete work, illegally and without any sanction.</p>	<p><u>Statement in defense with supporting record</u></p> <p>Al Azim Hotel.</p> <p>1. Encroachment measured with NAB vide list of plots at Ghoradhakka/ Khanspur showing the encroachment with related data at S.No.10, annexed with letter dated: 04-04-2014 (Anx: "E")</p> <p>2. Encroachment reported on file of plot No.28 Ghoradhakka vide note sheet Para 89 along with sketch/ site plan (Anx: "F")</p>

attested
[Signature]

Para.4 of show cause notice (reproduced)

You have also been found disobedient to comply with the lawful orders of the competent authority to perform your duties, duly assigned, particularly. The affairs of building control Agency (BCA) and to submit timely reports of construction activities to your senior, which is a clear evidence of your connivance extended to the land grabbers, land mafia and encroachers, and spea loud that you have joined hands with them

Statement in defense with supporting record

Its evident from following that we are over burden and performing extra duty other than designated services as per my designation i.e. Tracer.

1. Contribution in the different GDA day to day important matters/ task order by the competent authority i.e. reports on plots of estate and general branch, important correspondence, typing /drafting of letters, preparation of working papers for meeting, Annexure papers, BOA, creation of new towns, master planning, court matters, etc.
2. As regard BCA, reporting of unauthorized construction and connivance etc. BCA duty relates to drawing section only to the extent of preparation of reports, site plan, consultation of building plans on case to case basis as and when directed verbally or in writing on order sheets on concerned files.

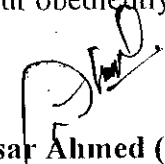
Para.5 of show cause notice (reproduced)

Your above willful and deliberate acts and omissions tantamount to gross misconduct and render you to be proceeded against under the relevant law. Since, the record and personal observations of the undersigned establish your willful and deliberate acts, therefore, feeling no need to order inquiry, you are directed to submit your written defence within seven (07) days of the receipt of this notice, positively, failing which you will be proceeded against, ex-parte.

Keeping in view my duty as per designation (Tracer), it is requested that I may not be treated at par with my superiors and statement given in my defense above may please be considered sympathetically and further proceeding may please be stopped.

attached
Am

Your obediently,



Nisar Ahmed (Tracer)
Galiyat Development Authority
Abbottabad

Dated:06.01.2015



Galiyat Development Authority, Abbottabad

Government of Khyber Pakhtunkhwa

Ph: 0992-9310240, Fax: 0992-331535

Email: gdaatd@gmail.com

The Dated: 03rd August, 2015:

OFFICE ORDER:

No: GDA/P.F/1527-30 /Admn:- In exercise of powers under Rule 5 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 read with Rule 20 of Galiyat Development Authority (Terms & Conditions) of Service Rules, 2012, I, Syed Nazar Hussain Shah, being Competent Authority have decided to dispense with the requirement of holding inquiry against Mr. Nisar Ahmad, Tracer, GDA (accused official) due to availability of sufficient material on record and grounds mentioned below:-

- (i) The accused official was directed vide office orders bearing No. GDA/PF/9414/Admn, dated 31st December, 2014 and No. GDA/9451/Admn: dated 31st December, 2014 to demarcate the encroachments and properties hindering the right of way, and to place correct and updated data before the Competent Authority. But, he deliberately did not conduct the demarcation, thereby, committed willful disobedience and concealment of facts;
- (ii) The accused official had willfully concealed the fact that the allotment of Fog Land Hotel, Nathiagali was not approved by the Provincial Government, therefore, he was not entitled to construction on any alternate site. And due to such concealment of facts, the illegal occupier of Fog Land Hotel was permitted to construct the hotel building on alternate site, in the wake of the Chief Minister's directive;
- (iii) The accused official had intentionally and deliberately misled the Anti-Encroachment Team in the case of Lalazar Hotel, Ayubia informing that there was no encroachment. But, Hotel Management was found to have encroached upon approximately 5 Marlas land in excess against the allotted land;
- (iv) The accused official intentionally had misguided the Anti-encroachment Team, when the Team arrived at "Saba Dreams Hotel", Ayubia for removal of illegal construction on land belonging to GDA by informing the Team that there was no encroachment on GDA land, and that the Hotel was holding possession of the area duly allotted. But, when the Team undertook the measurements itself, the covered area of Hotel came out to be about 11 Marlas against the allotted area of 5 Marlas.
- (v) The accused official had willfully concealed the encroachment of Al-Azim Hotel, where the Management of Al-Azeem Hotel was found encroached upon an area of more than 1 Kanal, damaging Green Belt by concrete work, illegally and without any sanction;
- (vi) The accused official had been found disobedient in complying the orders of Competent Authority concerning performance of duties, duly assigned, particularly, regarding the affairs of Building Control Agency (BCA) and to submit timely reports of construction activities to seniors, which was a clear proof of his connivance extended to land grabbers, land mafia and encroachers, and speak loud that the accused official had joined hands with them.

The accused official was served with a Show Cause Notices No: GDA/PF/9414/Admn, dated 31st December, 2014 and No. GDA/9451/Admn: dated 31st December, 2014, he however, submitted written replies to the Show Cause Notices, on 06th January, 2015. But, the replies were found un-satisfactory, as the charges leveled against the accused official were proved on record and were physically apparent. Moreover, no convincing defence could have been offered. However, the accused official was afforded opportunity of personal hearing and was heard in person on 09th July, 2015. But, nothing worth considering has been placed before the undersigned to have explained his position with respect to the charges mentioned above.

attested
[Signature]

69

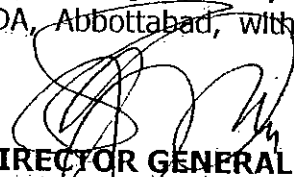
14

[Signature]
3/8

15

70

In view of the above circumstances, the charges stand proved against the accused official as per record and ground realities, who failed to advance any convincing and acceptable defence. Hence, I, Director General, Galiyat Development Authority, Abbottabad being Competent Authority do, hereby, impose major penalty of dismissal from service upon Mr. Nisar Ahmad, Tracer GDA, Abbottabad, with immediate effect, in the larger interests of public.



DIRECTOR GENERAL
GALIYAT DEVELOPMENT AUTHORITY
ABBOTTABAD

Cc:-

1. Secretary to Government of Khyber Pakhtunkhwa, Local Government, Election & Rural Development Department.
2. Director, Galiyat Development Authority, Abbottabad.
3. Accounts Officer, Galiyat Development Authority, Abbottabad.

attested
Am



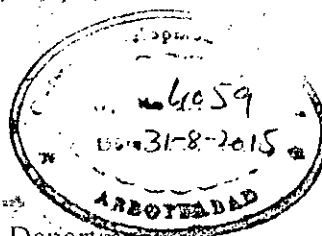
DIRECTOR GENERAL
GALIYAT DEVELOPMENT AUTHORITY
ABBOTTABAD

To

The Secretary

Local Government, Election and Rural Department
Khyber Pakhtunkhwa, Peshawar.

16



A

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED OFFICE ORDER ISSUED UNDER NO GDA/P.F/1527-30/ADMN DATED 03/08/2015 BY THE DIRECTOR GENERAL GALLIYAT DEVELOPMENT AUTHORITY P.M.A KAKUL ROAD ABBOTTABAD WHEREBY IMPOSED MAJOR PENALTY OF DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT AGAINST APPELLANT, HAVING 09 YEARS REGULAR SERVICE.

DEPARTMENTAL APPEAL

INDEX

S.No	DESC: OF DOCUMENTS	ANNEXURES	PAGE No
1	Memo; of Departmental Appeal	---	1 to 7
2	Copy of Peshawar High Court Order	A	8-12
3	Copy of office order dated 18/11/2013.	B	13
4	Copies of relevant pages of report some notices	C	14-25
5	Copy of some notices	D	26-31
6	Copy of NAB letter dated 20/02/2013	E	32
7	Copy of NAB letter dated 28/02/2013	F	33
8	Copy of relevant pages of report (NAB)	G	34-41
9	Copy of letter dated 04/04/2014(NAB)	H	42-44
10	Copy of Office Order 09/05/2014	H-1	45
11	Copy of Show Cause notice 31/12/2014	I	46
12	Copy of Show Cause notice 31/12/2014	J	47
13	Copy of Reply dated 06/01/2015	K	48-53
14	Copy of Reply dated 06/01/2015	L	54-68
15	Copy of Impugned Order dated 03/08/2015	M	69-70
16	Copy of Show Cause Notice relating to Mr: Saced Akhtar	N	71-72

Dated 28/08/2015

Nisar Ahmad S/O Khalid Pervaiz,
Tracer GDA Abbottabad R/o C/O
Muhammad Maroof House no IV-
6Magistrate Colony Near Punj Peer
Police Line Abbottabad

Scanned by CamScanner

attested

17

1

To

The Secretary
Local Government, Election and Rural Department
Khyber Pakhtunkhwa, Peshawar.

DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED OFFICE ORDER ISSUED UNDER NO
GDA/P.F/1527-30/ADMN DATED 03/08/2015 BY THE
DIRECTOR GENERAL GALLIYAT DEVELOPMENT
AUTHORITY P.M.A KAKUL ROAD ABBOTTABAD
WHEREBY IMPOSED MAJOR PENALTY OF
DISMISSAL FROM SERVICE WITH IMMEDIATE
EFFECT AGAINST APPELLANT, HAVING 09
YEARS REGULAR SERVICE.

Respected Sir,

Appellant submits his appeal as under

- 1) That appellant was appointed on regular basis as Tracer in BPS # 05 on 02/10/2006 and was working in Galliyat Development Authority P.M.A Kakul Road Abbottabad in the same scale PBS # 05 and has unblemished service record in his credit and always performed his duties to the entire satisfaction of higher authorities. ✓
- 2) That Peshawar High Court while hearing a Writ Petition No 384 of 2011 (titled M/S Shamsi Builders Ltd Versus The Galliyat Development Authority etc) was passed an order on 07/02/2013, relevant portion of the order is reproduced herein below,

Attested
As

“Therefore, DG NAB shall depute senior investigating/enquiry officer to examine the record of GDA & carry out spot inspection of multistory buildings in Galiyat and to also discover that who amongst the officials were involved, permitting the raising of structure in violation of law and what was consideration for allowing such illegal activities and if case is made out and culprits are traced out they shall be

booked under the relevant law and reference be prepared & filed against them.”

Copy of Peshawar High Court Order is annexed as **Annexure A**.

3) That on the basis of decision of Board of Authority (BOA) in its meeting on 22/10/2013 & directives of Peshawar High Court passed in Writ Petition No 348 of 2011, Director General GDA Abbottabad issued Office Order dated 18/11/2013 wherein Assessment and Demolition Committee constituted, Body of Committee is as Under

- 1) Eng: Gulzar Muhammad ----- Chairman
Director GDA Abbottabad.
- 2) Mr: Muhammad Gulistan ----- Member
AD(T) GDA Abbottabad.
- 3) Mr: Saeed Akhtar ----- Member
Draftsman GDA Abbottabad.
- 4) Mr: Wasif Mir ----- Member
B.I GDA Abbottabad.
- 5) Mr: Nisar Ahmad(**Appellant**)----- Member
Tracer GDA Abbottabad.

attested
As

It was heavy work, and was required large number of staff to meet the target/task, so in the same office order dated 18/11/2013, special note was mentioned regarding to required staff and in this reason all contingent paid staff whose services have been extended shall remain at the disposal of committee. Copy of office order is annexed as **Annexure "B"**

4) That committee and appellant being its member along with almost all available unskilled and unqualified staff including Clerical staff, Peons, Chowkidars, Drivers and Gardners (Malis) of GDA Abbottabad, participated the huge task and prepared relevant report as required by the committee (TORs of Committee) in the office order and where it was found any violation, notices under the relevant law were being issued by the competent authority. The committee prepared a tentative report of

19

3

approximately 900 plots after regular work of nearly two months. Copies of relevant pages of report and some notices are annexed as Annexure "C" & "D"

5) That it is well pertinent to mention here that before the issuance of office order dated 18/11/2013 above relating to asses the nature of violations upon the GDA property, In compliance the order of Peshawar High Court passed in Writ Petition No 384 of 2011 on 07/02/2013, NAB KPK Peshawar wrote a letter dated 20/02/2013 to DG GDA Abbottabad for the provision of record/information and also deputed senior investigating officer for conducting inquiry and investigating team started their inquiry/work in April 2013 and report was prepared on 31/10/2013 for it submission before Peshawar High Court in Writ Petition ibid. appellant fully assisted and co-operated the NAB investigating team on each and every plot where they selected to collect data and to detect any violation, and all their record was prepared with the participation of appellant. Copy of NAB letter dated 20/02/2013 & 28/02/2013 and relevant pages of report are annexed as Annexure "E", "F" & "G" respectively

attested
By

6) That in the meanwhile, the NAB KPK Peshawar wrote a letter dated 04/04/2014 relating to find out other illegalities of same nature in the area of GDA Abbottabad, while on the other hand Assessment and Demolition Committee was preparing the encroachment detail. Dy Director (Admn) GDA Abbottabad issued office order on 09/05/2014 regarding to Anti encroachment drive within very short notice of few hours, wherein 08 persons including appellant were stated responsible, in the Anti encroachment drive, appellant not only completely participated but detected the encroached portion. Copy of letter dated 04/04/2014(NAB) & Office Order 09/05/2014 are annexed as Annexure "H" & "H-1"

20

4

- 7) That process of assessment of violation was going on and during the same, Director General GDA Abbottabad served two separate Show cause notices to appellant on 31/12/2014 which were not only base-less but against the legal and factual position of the record and real position, appellant submitted his reply to the both notices on 06/01/2015. Copies of both Show Cause notices and replies are annexed as Annexure "I", "J", "K" & "L"
- 8) That before or after issuance of Show Cause Notice dated 31/12/2014, DG, GDA Abbottabad did not suspended the appellant nor serve any Charge Sheet and appellant was performing his duties regularly. But appellant was never informed about Show Cause Proceedings by the DG as according to ground facts and unreal allegations raised in proceedings it was apparent that DG was predetermined mind to hang the appellant in any kind of true or false case, to release the pressure of NAB Authorities as well as Board of Authority and Peshawar High Court, and all the responsibilities were shifted to the lower employees just like appellant who was in BPS No 05.
- 9) That after about 08 months, Director General GDA Abbottabad, with out examining the record, reply of appellant and with out adopting legal process of relevant law, illegally appellant being 09 years regular service, dismissed from their service through Office Order dated 03/08/2015, Copy of Office Order dated 03/08/2015 is annexed as Annexure "M" which is being assailed/impugned through instant departmental appeal on the following amongst other grounds

Attested
Ans

GROUND

- a) That appellant was served 9 years service and he was in BPS No 05, low paid employee and he was no powers & jurisdiction to interrupt and decide the whole routine matter of GDA nor has any power in the affairs of GDA Abbottabad beyond his service status, he is not responsible

for those acts or omissions if available in any manner, which was the powers and jurisdiction of his superior/Officers, according to GDA Service Rules-2012, DG-PBS 20, 03 officers in 18, 02 officers in 17, 02 officers in 16, and so on, similarly appellant's position according to appendix is at lowest level (Tracer in BPS # 05) but when gone through the reasons of Impugned Office Order dated 03/08/2015 wherein it seems that whole responsibilities of GDA was, upon appellant which is admittedly illegal and appellant was made scapegoat in the matter of his dismissal from service.

b) That DG GDA did not fix the responsibilities according to facts and service status and illegally released the pressure of NAB Authorities, Board of Authority and Peshawar High Court on the bottom (low paid employees) including appellant while in the committee high ranking officers have not enquired at any level and DG issued the impugned dismissal order in serious violation of relevant law and ignored the provision of Article 25 of the Constitution of Pakistan while exercising his powers in refusing the relief to the appellant committed discrimination.

attested
[Signature]

c) That dismissal of service of appellant was very serious matter as he his regular service is 09 years and DG has very simply issued dismissal order and has totally failed to appreciate the contents, facts, grounds and law of the case but side tracked the legal aspects of the case, as thus impugned judgment is based on surmises and conjectures.

d) That in the case of appellant under the law formal enquiry was much important but no formal inquiry was conducted in the case which was much necessary to reach the conclusion of the case, there was no such special circumstances available in the case where enquiry

proceedings is dispensed which was referred in the KPK Govt: Servants (E & D) Rules, 2011, thus dismissal order issued on surmises under which the whole process was initiated and the very illegal and unlawful order was issued.

e) That application of rule 07 of the KPK Govt: Servants (E & D) Rules, 2011 is against the facts and circumstances of the case as well as with out holding of formal inquiry it is not clear just surmises that what were the material/grounds, under which the whole process was initiated and the very illegal and unlawful order was issued.

f) That under the law, during the formal inquiry proceedings, accused uses/exercises his full opportunity to cross the witnesses of the case as well as documents, for the purpose of placing on record and for focus the very real and factual position, but issuing Authority DG was clearly biased, as he reversed the same allegations from Mr: Saeed Akhtar working as Draftsman and he was served under same allegations through Show Cause Notice on 31/12/2014 by the DG and he was dismissed too on the same date 03/08/2015, under other allegations. Copy of Show Cause Notice relating to Mr: Saeed Akhtar is annexed as Annexure "N"

*Attested
Dr*

g) That there is adopted no prescribed procedure in the case and all is done for save the other staff by sacrifice appellant in his dismissal from service, which is against law.

h) That it is admitted facts that separately issuance of two show cause notices in the same day and same time, did not cover any law, but that was related with the record and all the record favours to appellant, which can not be concealed as available with two forum i.e. NAB Authorities and in the GDA record and legally case relates pro and contra

23

7

evidence through formal enquiry and can not be proved in hurry manner.

- i) That dismissal order was issued contrary to relevant law, as there is no major penalty was proposed specifically while 04 kinds of major penalties were available and the only one must be offered under which further order is being issued under the law but proper procedure was not adopted and thus impugned order is illegal and liable to be set aside.
- j) That before the NAB authorities the enquiry proceedings are being continued and they did not fix the target and not yet file reference in the Accountability Court but how DG initiated pre-mature proceedings unlawfully and issued dismissal order with out any legal and factual footing, the Instant departmental appeal is being filed with in time

In the light of the above factual and legal position the impugned Office Order dated 03/08/2015 may kindly be set aside and appellant may graciously be reinstated in service with all back benefits in the interest of justice.

attested
[Signature]

An interim relief the operation of order dated 03/08/2015 through which appellant dismissed from service may please be suspended till the final disposal of the titled departmental appeal.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.

Yours Sincerely

[Signature]

Dated 28/08/2015

Nisar Ahmad S/O Khalid Pervaiz,
Tracer GDA Abbottabad R/o C/O
Muhammad Maroof House no IV-
6Magistrate Colony Near Punj Peer
Police Line Abbottabad.

Copy to:- for Information and necessary action. DG GDA Abbottabad

No. 787

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. Ps.

29

5

89

Received a registered addressed to

Date Stamp

Initials of Receiving Office *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) (in words)

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

DCS

SERVICES

ABT/MO

CUSTOMERS SERVICES DEPT. UAN 111-202-202

KHI 35319351, LHE 37552913, ISB 2824890, FSD 8716575, UET 2863105 RWP 5478473, MUX 4541453, HDD 3821231, GUJ 3859433, PEW 5275969

O/N EXP DTN 72 Hrs.

CONSIGNOR'S ACCOUNT NO. DESTINATION PIECES WEIGHT

DOM N. No.

14711

0190868

PEW

1 5

CONSIGNOR

CONSIGNEE

CASH

Nisar

Honorable Secretary

CHARGES

1. CHARGED RATES

2. OTHER CHARGES

3. INSURANCE

4. S.T. 16% (1+2+3)

5.

6. TOTAL (1 To 5)

SENT BY

TEL

ATTENTION

TEL

DESCRIPTION OF CONTENTS

DECLARED VALUE

INSURANCE: DO YOU REQUIRE COVERAGE?

YES

NO

AMOUNT

THIS IS A NON-NEGOTIABLE CONSIGNMENT NOTE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE OF SHIPPER'S COPY IN TENDERING THIS SHIPMENT. SHIPPER AGREES THAT DCS SHALL NOT BE LIABLE FOR SPECIAL INCIDENT FOR CONSEQUENTIAL DELAYS OR DAMAGES ARISING FROM CARRIAGE. HEREOF, DCS DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH RESPECT TO THIS SHIPMENT. THE LIABILITY OF DCS FOR ANY LOSS OR DAMAGE SHALL BE LIMITED TO RS. 100. THE SHIPMENT UNDER THIS CONSIGNMENT NOTE IS NOT INSURED BY THE SHIPPER, IT WILL BE TREATED 'ON SHIPPER'S RISK' ALONE.

I WARRANT THAT ALL ABOVE DETAILS GIVEN HEREIN ARE TRUE AND CORRECT

NAME

CODE

COLLECTION BY DCS.

Am 117

DATE

TIME

21/10/15

A.M.

P.M.

CONSIGNOR'S SIGNATURE

SENDER

CONSIGNMENT NOTE - NON-NEGOTIABLE

RECEIVED IN GOOD ORDER AND CONDITION

CONSIGNEE'S SIGNATURE

PLEASE PRINT NAME

DATE

TIME

A.M.

P.M.

S.T. NO.: 12-00-9808-003-55

Scanned by CamScanner

attested
An