

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Appeal No.8489/2020

Sher Alam, Ex-Patwari, District Peshawar

.....(Appellant)

VERSUS

1. Senior Member Board of Revenue through its Chairman Peshawar.
2. Commissioner Peshawar Division, Peshawar.
3. Deputy Commissioner Peshawar

.....(Respondents)

INDEX

S.No.	Description	Annex	Page
1	Affidavit		1
2	Authority letter		2
3	Parawise comments		3&4
4	Copy of suspension order	Annex-A	5
5	Copy of dismissal order	Annex-B	6
6	Copy notice served	Annex-C	7
7	Copy of letter issued to Director Information alongwith notice for publication	Annex-D	8&9
8	Copy of Section 9 of Govt. Servant (E&D) Rules 2011 regarding willful absence	Annex-E	10



Assistant Commissioner (HQ)
Peshawar

30-04-2024
D.B
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 8489/2020

Sher Alam, Ex-Patwari, District Peshawar.

... Petitioner

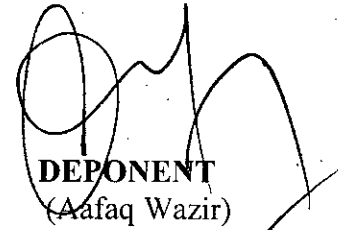
VS

1. Senior Member Board of Revenue through its Chairman Peshawar.
2. Commissioner, Peshawar Division, Peshawar.
3. Deputy Commissioner, Peshawar Khyber Road, Peshawar.

.... Respondents

AFFIDAVIT

I, Mr. Afaq Wazir, Deputy Commissioner (Peshawar), do hereby solemnly affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and belief. It is further stated on oath that in this appeal the answering respondent have neither been place Ex-Parte nor their defense has been struck off/Cost.



Deputy Commissioner, Peshawar

**Deputy Commissioner
Peshawar**

YASIN
ATTESTED
Muhammad Yasin Advocate
Oath Commissioner
High Court Peshawar

29/02/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 8489/2020

Sher Alam, Ex-Patwari, District Peshawar.

... Petitioner

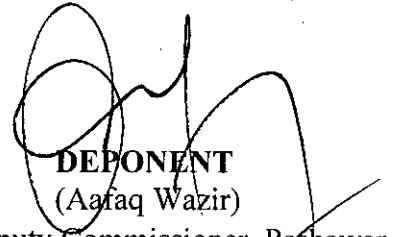
VS

4. Senior Member Board of Revenue through its Chairman Peshawar.
5. Commissioner, Peshawar Division, Peshawar.
6. Deputy Commissioner, Peshawar Khyber Road, Peshawar.

.... Respondents

AUTHORITY LETTER

I, Mr. Aafaq Wazir, Deputy Commissioner (Peshawar), do hereby authorized Mr. Pervez Khan Superintendent of Deputy Commissioner office, Peshawar for submission of Joint Parawise Comments before the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar and to peruse the case on each subsequent hearing fixed in the case till finalization of the case, hence, an authority letter issued in favor of the above-named officer.


DEPONENT
(Aafaq Wazir)
Deputy Commissioner, Peshawar
Deputy Commissioner
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Appeal No.8489/2020

Sher Alam, Ex-Patwari, District Peshawar

.....(Appellant)

VERSUS

1. Senior Member Board of Revenue through its Chairman Peshawar.
2. Commissioner Peshawar Division, Peshawar.
3. Deputy Commissioner Peshawar

Khyber Pakhtunkhwa
Services Tribunal

Diary No. 11940

29-02-2024

.....(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 to 3

Respectfully Sheweth,

Preliminary Objections.

1. That the appellant in the instant case has no locus standi and cause of action to institute present appeal.
2. That the appellant has not come to this honourable court with clean hands.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in the present form.
5. That the instant appellant is barred by law and badly time barred, as no departmental appeal has been filed by the appellant.
6. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

REPLY ON FACTS.


1. Correct to the extent that the appellant was a Patwari in District Peshawar.
2. Pertains to record.
3. Correct to the extent that appellant was suspended through order dated 21-03-2017 (Annex-A).
4. Correct to the extent that after following legal procedure prescribed under Govt. Servant Efficiency & Discipline Rules 2011 the appellant was removed from service and details mentioned in the removal order vide No.1686/DK dated 31-07-2019. (Annex-B).
5. Incorrect. No Departmental Appeal was filed before the appellate authority i.e. Respondent No.2 (Commissioner Peshawar Division Peshawar). The appellant is trying to save himself from time barring limit by stating wrong information before the honourable court.
6. The appellant is requesting undue benefits unlawfully by forwarding time barred appeal, who was dealt with according to the Law after fulfilling all the codal formalities.

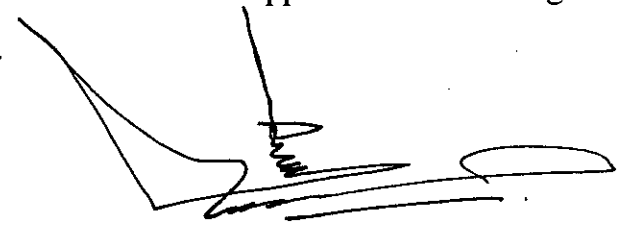
(Continued on Page-2)

REPLY ON GROUNDS

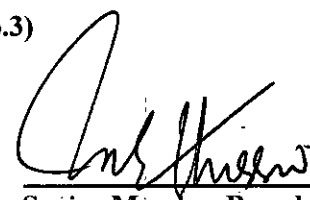
- A. Incorrect. The order was issued according to the Govt. Servant (E&D) Rules 2011 by following section 9 (Procedure in case of willful absence) and no law was violated. After issuance of registered notice on his home address on 19-06-2019 (**Annex-C**), Director Information vide letter No.1353/DC(P)/DK dated 02-07-2019 was requested for publishing final notice through newspaper (**Annex-D**) and subsequently major penalty of removal from service was imposed on the official (**Annex-B**).
- B. Incorrect. The case was processed in terms of Section-9 of Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules 2011 (**Annex-E**) and the official was duly informed through notices.
- C. Incorrect. As per para-B above.
- D. Incorrect. As per para-B above.
- E. Incorrect. As per para-B above.
- F. Incorrect. As per para-B above.
- G. Incorrect. The appellant was wilfully absent without taking any prior leave/permission. He was called in person by the Competent Authority but he could not justify/defend his willful absence (**Annex-B**).
- H. Incorrect. The same has been mentioned in the notices served upon him (**Annex-A**).
- I. Incorrect. The competent authority i.e. Respondent No.1(Deputy Commissioner Peshawar) was well aware of the rules/regulations which were followed accordingly.
- J. Incorrect. The appellant is trying to mislead the case by hiding his willful absence from duty unauthorizedly.
- K. Incorrect. No appeal was filed before the competent forum within the stipulated period and now after lapse of about three years the appellant waken from deep sleep and filed the instant unlawful appeal.
- L. The respondents seek permission to raise additional grounds at the time of arguments. Furthermore the lassitude attitude of the appellant clearly depicts that he is not only wasting precious time of honourable court and Govt. but also incapable for any Govt. service.

It is therefore prayed before the honourable Tribunal that appeal in hand having no weight may very humbly be dismissed with cost.

Shafiqullah

Deputy Commissioner/Collector
Peshawar
(Respondent No.3)


Commissioner Peshawar Division,
Peshawar
(Respondent No.2) *Raza Khan*
Mehsood

DEPUTY COMMISSIONER
PESHAWAR


Senior Member Board of Revenue
Revenue & Estate Department Khyber Pakhtunkhwa
(Respondent No.1)

Ikram Ullah

SENIOR MEMBER
Board of Revenue
Khyber Pakhtunkhwa



(17)

(5)

Am-A

OFFICE OF THE
DEPUTY COMMISSIONER
PESHAWAR

Dated Pesh. the 21/03/2017

OFFICE ORDER

No. 5147 /DC(P)/EA

Consequent upon the recommendations of the Inquiry Officer (Additional Deputy Commissioner Peshawar) appointed on the direction of CM Complaint & Redressal Cell received through Section Officer-I (C&RC) vide letter No. SO(C&RC)/GMS/1-28/M. Adnan/App/2193 dated 21/10/2016 on the complaint of Mr. Muhammad Adnan s/o Wali Jan r/o H.No.585 Str-314, Sector F-6, Phase-VI, Hayatabad, Peshawar, Mr. Sher Alam Patwari Halqa Mathra Peshawar is hereby placed under suspension with immediate effect for receiving Rs.4,20,000/- as Tax unlawfully, delaying in attestation of mutation for 14 months, and keeping one Kashif as Munshi against the instructions of Board of Revenue Khyber Pakhtunkhwa.

Deputy Commissioner
Peshawar

Encls. No. 5148-53 /DC(P)/DK

Copy forwarded to the:-

1. Addl. Deputy Commissioner, Peshawar.
2. Assistant Commissioner, Peshawar.
3. Accounts Officer of this office for necessary action.
4. District Kanungo, Peshawar.
5. Tehsil Bar, Peshawar with the direction to hand over the charge of the Halqa concerned to the contiguous Patwari till further order.
6. Office(s) concerned (under suspension).

Deputy Commissioner
Peshawar

[Handwritten signature]
[Handwritten signature]



THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, DCPeshawar

No. 1686/DK

Dated: 31-July-2019

ORDER:

WHEREAS, Mr. Sher Alam Patwari was found suspended from service since 2018 and absent from office, proceeded under section 9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 by issuing a Notice vide No.1185/DK dated 19-06-2019 for making appearance in the office and explaining his position of willful absence within 15 days.

AND WHEREAS, the accused official failed to appear within the stipulated date. The accused was served upon a notice in daily newspaper through Director Information vide letter No.1353/DC(P)/DK dated 02/07/2019 for appearing within 15 days and explaining his position.

AND WHEREAS, the accused official submitted his reply on 09-07-2019, stating that he was called by different officers for personal hearing but did not finalize the case, besides he is facing thyroid cancer and obtaining treatment from Shoukat Khanam Memorial Hospital and still under treatment and requested for his re-instatement.

AND WHEREAS, the accused official was called for personal hearing on 25-07-2019 and heard in person. He could not show any approval of competent for the leave he enjoyed or any valid reason for his absence from duty.

AND WHEREAS, considering the willful absence of accused official, his reply and other circumstances, I, Muhammad Ali Asghar, Deputy Commissioner, Peshawar in the capacity as Competent Authority is of the opinion that the charges of willful absence from duty leveled against him stand proved.

NOW THEREFORE, in exercise of the powers conferred under Rule-04(1)(b)(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, a major penalty of **Removal from service** is hereby imposed upon Mr. Sher Alam, Patwari from the date of his absence and recovery of salaries thereof wrongfully drawn during the period of absence.

(MUHAMMAD ALI ASGHAR)
DEPUTY COMMISSIONER

Endst: No. and Date Even:

- (i) Commissioner, Peshawar Division, Peshawar.
- (ii) Addl. Deputy Commissioner, Peshawar.
- (iii) Assistant Commissioner, Peshawar.
- (iv) Addl. Assistant Commissioner (HQ), Peshawar.
- (v) Accounts Officer of DC office for necessary action.
- (vi) RBC, Accounts Section for necessary action.
- (vii) Tehsildar Peshawar.
- (viii) Mr. Sher Alam, Ex-Patwari.

TESTED

Addl. Assistant Commissioner (HQ)
Peshawar

DEPUTY COMMISSIONER

ANW

ANX "C"

(7)

IMMEDIATE



THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, DCPeshawar

No. 1185 /DK

Dated: 19-June-2019

To: Mr. Sher Alam Khan S/o Muhammad Zarin Khan. Patwari.
R/o Village Kodi Ashab Baba, Chaghar Matti, Peshawar.

Subject: NOTICE UNDER RULE 9 OF KHYBER PAKHTUNKHWA GOVT. SERVANT (EFFICIENCY & DISCIPLINE) RULES, 2011

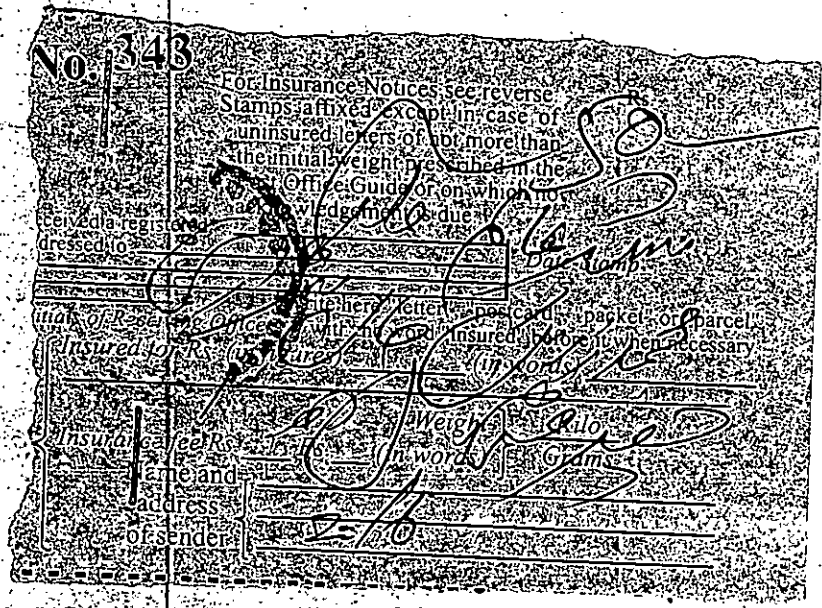
It has been reported that you are found absent from duty since 2017 and your whereabouts is unknown. Your willful absence from duty tantamount towards ill-discipline, misconduct and utter disregard of official decorum and clearly speaks that you are not interested in your job.

You are therefore served upon with this notice under Rule 9 of Efficiency and Discipline Rules 2011 to ATTEND this office within 15 days; positively and explain your position that why disciplinary action under the said rules should not be initiated against you for this delinquency. Your reply should reach this office within the time limit positively from the ssuance of this Notice.

(MUHAMMAD ALI ASGHAR)
DEPUTY COMMISSIONER

ATTESTED

Addl: Assistant Commissioner (HQ)
Peshawar



(8) ANK'D



**OFFICE OF THE
DEPUTY COMMISSIONER /DISTRICT COLLECTOR
PESHAWAR**

Khyber Road Kacheri Gate No.3 District Courts Peshawar

No. 1353 /DC(P)DK

Dated Peshawar the 02/07/2019

To

The Director Information,
Khyber Pakhtunkhwa, Peshawar.

Subject: **ADVERTISEMENT**

Enclosed please find herewith two copies of advertisement regarding notice for attendance for publishing in daily newspapers.

A copy of the published advertisement may please be provided to this office for further necessary action. The bill may be submitted for payment please.

Encl. As Above

**Additional Assistant Commissioner (HQ)
Peshawar**

ATTESTED

**Addl. Assistant Commissioner (HQ)
Peshawar**

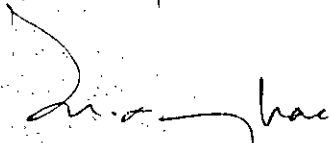
نوٹس برائے حاضری

آپ درج ذیل پنواری کافی عرصہ سے اپنی ڈیوٹی سے غیر حاضر ہیں۔ اس سلسلے میں آپ کو درج ذیل خطوں کے ذریعے نوٹس کی گئی کہ آپ دفتر میں حاضر ہو کر اپنی غیر حاضری کی وضاحت کریں لیکن نہ تو آپ خود حاضر ہوئے اور نہ ہی آپ کی طرف سے کوئی اطلاع یا تحریری جواب موصول ہوا۔


نمبر شمار	نام پنواری	پتہ	خط نمبر
1	شاہ فہد خان ولد حاجی سعادت خان	مکان نمبر 18، اولڈ جمرو روڈ، یونیورسٹی ٹاؤن، پشاور	No.1183/DK dated 19/06/2019
2	محمد شعیب ولد حبیب الرحمن	بیرون یکہ توت، پشاور	No.1184/DK dated 19/06/2019
3	شیر عالم خان ولد محمد زرین خان	موضع کوڈی اصحاب بابا، پعفر مٹی، پشاور	No.1185/DK dated 19/06/2019

درج بالا وجوہات کی بنا پر آپ کو آخری موقع دیا جاتا ہے کہ آپ اشتہار ہذا کی اشاعت کے پندرہ دن کے اندر اپنی ڈیوٹی پر حاضر ہو جائیں اور ساتھ ہی اپنی غیر حاضری کی وضاحت بھی کریں۔ بصورت دیگر آپ کو مجوزہ قانون کے تحت نوکری سے برخواست کر دیا جائیگا۔

بجائے


(محمد علی اصغر)
ڈپٹی کمشنر پشاور

ARRESTED


Addl. Assistant Commissioner
Peshawar

(10)

ANX "E"

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

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

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

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

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

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

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

ATTENDED

Addr: Assistant Commissioner (HQ)
Deshawal