

S. No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	08.11.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT SWAT</u></p> <p style="text-align: center;">Appeal No. 899/2015</p> <p style="text-align: center;">Rehman Ullah Versus Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar and 2 others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Appellant with counsel and Mr. Muhammad Zubair, Senior Government Pleader alongwith Khawas Khan, S.I for respondents present.</p> <p>2. Mr. Rehman Ullah son of Ajdar Khan hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 17.06.2011 vide which he was removed from service and where-against his departmental appeal dated 16.4.2015 was not responded constraining the appellant to prefer the instant service appeal on 10.08.2015.</p> <p>3. Brief facts of the case of the appellant are that he was serving as Chowkidar in Basic Health Unit (BHU) Patrak District Upper Dir when subjected to enquiry on the allegations of involvement in misappropriation of medical instruments/equipments and as a consequence thereof removed from service vide original order dated 17.6.2011 where-against his departmental appeal was not responded and hence the instant service appeal.</p> <p>4. Learned counsel for the appellant has argued that the appellant was innocent and was made scapegoat for the missing equipments from the main</p>

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08.11.16

store of the hospital. That apart from the departmental enquiry appellant was also prosecuted in a criminal case registered vide FIR No. 1 dated 23.04.2011 under Sections 409 PPC read with 5(2) P.C Act Police Station, A.C.E Dir and was acquitted of the charges by the learned Special Judge, Anti-Corruption, Khyber Pakhtunkhwa Camp Court, Swat vide judgment dated 02.04.2015. That the said learned court had observed that the missing equipments and instruments were not kept in store No. 3, keys whereof were handed over to the appellant. That the impugned order was therefore liable to be set aside.

5. In support of his stance learned counsel for the appellant placed reliance on case-laws reported as PLD 2010-Supreme Court-695 and 1998-SCMR-1993 (Supreme Court of Pakistan).

6. Learned Senior Government Pleader has argued that mere acquittal of the appellant would not justify reinstatement of the appellant in service as his guilt was established during the departmental enquiry. He further argued that the appeal of the appellant was liable to dismissal.

7. We have heard arguments of learned counsel for the parties and perused the record.

8. According to material placed on record appellant was serving as Chowkidar. The keys of store No. 3 were handed over to him by Dr. Daud. There is no evidence to observe that the appellant had misappropriated medical equipments as according to observations of the learned Special Judge, Anti-Corruption, Khyber Pakhtunkhwa recorded in his judgment dated 02.4.2015 the said missing equipments were not stolen from store No. 3 keys whereof were handed over to the appellant. The said learned Judge has further observed that record in respect of the said equipments was not properly maintained and that the keys should have not been handed over to the

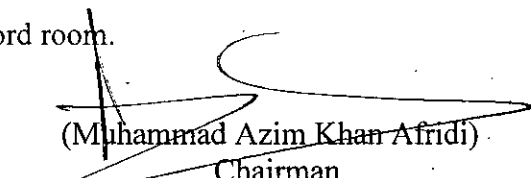
08.11.16

appellant. As a consequence of the said observations and findings of the learned Special Judge appellant was acquitted of the charges vide judgment dated 02.04.2015.

9. We have given due consideration to the stance of the appellant and have come to the conclusion that the observations of the learned trial Court in its judgment of acquittal dated 02.04.2015 cannot be overlooked more particularly when there was no other independent evidence produced during enquiry establishing the guilt of the appellant beyond doubt. Mere retaining the keys by the appellant under the directions of officers would not justify to punish the appellant for the missing equipments more particularly when there is no solid reason regarding missing of the said equipments from store No. 3 during period when the keys were in the possession of the appellant.

10. Keeping in view the afore-stated circumstances, we are constrained to accept the present appeal, set aside the impugned order of removal of the appellant from service dated 17.6.2011 and reinstate the appellant in service. Since the appellant was prima-facie made a scapegoat for the missing equipments as such we reinstate him in service with all back benefits and place the respondents at liberty to conduct departmental enquiry regarding the incident for digging out the real culprits. Parties are left to bear their own costs. File be consigned to the record room.


(Abdul Latif)
Member


(Muhammad Azim Khan Afridi)
Chairman
Camp Court, Swat.
08.11.16

ANNOUNCED
08.11.2016


04.02.2016

Agent of counsel for the appellant and Mr. Anwar-ul-Haq, GP for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 2.8.2016 at Camp Court Swat.


Chairman
Camp Court Swat

02.08.2016

Appellant with counsel (Mr. Imdadullah Advocate) and Mr. Ziaullah, Drug Inspector alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Wakalatnama and Rejoinder submitted. Due to non-availability of D.B arguments could not be heard. To come up for arguments on 08.11.2016 before D.B at camp court, Swat.


Chairman
Camp court, Swat.

27.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Chowkidar Class-IV employee when a criminal case on the allegations of theft was registered and appellant put to trial before the Special Judge Anti Corruption. That meanwhile appellant was subject to inquiry and vide impugned order dated 17.6.2011 dismissed from service. That the appellant was acquitted of the charges in a criminal case on 2.4.2015 where-after he preferred departmental appeal on 16.4.2015 followed by service appeal on 10.8.2015.

That the impugned order is against facts and law as the appellant stood acquitted from the criminal charges on the basis of which he was dismissed from service.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.11.2015 before S.B.


Chairman

26.11.2015

Appellant in person and Mr. Yar Gul, Senior Clerk for respondents No. 1 and 2 alongwith Addl: A.G for respondents present. The appeal pertains to the territorial limits of Malakand Division as such the same is to be posted to Swat. To come up for written reply/comments on 4.2.2016 at Camp Court, Swat. Fresh notice be issued to respondent No. 3 for the date fixed.


Chairman

Appellant Deposited
Sec. Process Fee

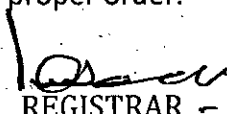




11-8-21

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 899/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.08.2015	<p>The appeal of Mr. Rehman Ullah presented today by Mr. Ghulam Nabi Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR -</p>
2	12-8-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13-8-15</u></p> <p> CHAIRMAN</p>
3	13.08.2015	<p>None present for appellant. Notice to counsel for the appellant be issued for 27.8.2015 for preliminary hearing before S.B.</p> <p> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:-

Service Appeal No. 899 / of 2015

Rehman Ullah son of Ajdar Khan... .. Appellant

VERSUS


Government of Khyber Pakhtunkhwa
through Secretary Health Department etc ... Respondents

I N D E X

S.No	Description of documents	Annexure	Page
1.	Service Appeal		1 - 4
2.	Affidavit		0 - 5
3.	Memo of Addresses		0 - 5
4.	Appointment order dated 21.4.1999	'A'	6
5.	Copy of the Reply dated 23.2.2011	'B'	7
6.	Copy of the FIR	'C'	8
7.	Copy of the judgment/order dated 2.4.2015	'D'	9 - 11
8.	Final Show Cause Notice dated 18.4.2011	'E'	12 - 13
9.	Copy of the impugned letter dated 17.6.2011	'F'	14
10.	Copy of Departmental Appeal of the appellant	'G'	15
11.	Vakalat Nama		


Appellant

Through:


(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan
B-17, Haroon Mansion
Khyber Bazar, Peshawar
Cell # 0300-5845943

And

Dated: 10.08.2015


(Mian Tajammal Shah)
Barrister, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 899 / of 2015

P.W.P. Province
Service Tribunal

Diary No. 949

Dated 10-8-2015

Rehman Ullah son of Ajdar Khan,
Ex. Chowkidar RHC, Patrak
District Upper Dir...

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa
through Secretary Health Department,
Peshawar.
2. Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.
3. Executive District Officer Health
District Upper Dir... Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE IMPUGNED ORDER
DATED 17.6.2011 WHEREBY THE
APPELLANT HAS BEEN REMOVED FROM
HIS SERVICE.

Prayer: On acceptance of this Service Appeal the impugned
Dated 17.6.2011 of the Executive District Officer
Health District Upper Dir may please be set aside and
the appellant be reinstated into his service with all
his back benefits.

Filed to-day
10/8/15

Respectfully Sheweth:

1. That the appellant was appointed at the post of Chowkidar in BHU Patrak District Upper Dir on 21.04.1999. (Copy of the appointment order dated 21.4.1999 is attached herewith as annexure 'A').

2. That the appellant has been serving his department with zeal and honesty, however, he received a Show Cause Notice from the concerned respondent alongwith the Statement of Allegations.
3. That the appellant duly replied to the above noted Show Cause Notice within the prescribed time. (Copy of the reply dated 23.2.2011 of the appellant is attached herewith as annexure 'B').
4. That as a result of the above noted baseless allegations an FIR was registered against the appellant, however, the appellant was acquitted from the Court of Special Judge Anti-Corruption Khyber Pakhtunkhwa Peshawar on 2.4.2015. (Copies of the FIR alongwith the order/judgment dated 2.4.2015 are attached herewith as annexures 'C' & 'D').
5. That in the meanwhile disciplinary action was initiated against the appellant by the Department, whereby he was given a Final Show Cause Notice on 18.4.2011. (Copy of the Final Show Cause Notice dated 18.4.2011 is attached herewith as annexure 'E').
6. That the appellant duly replied to the Final Show Cause Notice within the stipulated time, however, the appellant received a letter of major penalty of removal from service dated 17.6.2011. (Copy of the letter dated 17.6.2011 is attached herewith as annexure 'F').
7. That after the acquittal, the appellant then filed a Departmental Appeal on 16.4.2015, however, no heed was paid to the appeal of the appellant. (Copy of the Departmental Appeal is attached herewith as annexure 'G').
8. That the appellant now approaches this Honourable Tribunal for his reinstatement in service on the following grounds amongst others:-

GROUND:

- a. That the impugned order of removal from service of the appellant dated 17.6.2011 is illegal, unlawful, without

authority/jurisdiction and being based on malafide intention of the respondent department, is liable to be set aside.

- b. That mere allegations were levelled against the appellant which have neither been proved in the inquiry proceedings, nor in the Court of competent jurisdiction, still the appellant has been awarded a major penalty of Removal from Service.
- c. That the appellant was never involved in such like misconduct as alleged against him, however, for some malafide intentions he was given the Charge Sheets and Statement of Allegations for some misconduct which he has never committed.
- d. That no inquiry proceedings as are prescribed under the rules/regulations have ever been initiated or proceeded against the appellant, however, still he has been given a major penalty of Removal from service.
- e. That the appellant has been punished in summary trial manner without giving him any chance of defence nor has he been allowed to cross examine any witness if at all there was anyone against the appellant.
- f. That no proof whatsoever has been produced before the Criminal Court of law, hence the appellant has been acquitted honourably.
- g. That the appellant is innocent, has committed no misconduct, still he has been punished for no fault at his part.
- h. That all the above said acts of the departmental authorities are against the prevailing rules and the procedure prescribed in the concerned rules, hence are based on malafide and unjust attitude of the concerned authorities.
- i. That the respondents have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of

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Article 4 and 10A of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order which is unjust, unfair, hence not sustainable in the eyes of law.


- j. That some irregular inquiry conducted at the back of the appellant without associating the appellant with the inquiry proceedings thus the impugned order is void abinitio, arbitrary, hence not sustainable.

It is, therefore, humbly prayed that on acceptance of the instant Service Appeal the impugned order dated 17.6.2011 may please be set side and the appellant be reinstated back to his service with all back benefits.


Any other relief deemed proper and fit in the circumstances of the case and has not asked for may very graciously be granted to the appellant.


Appellant

Through:


(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan
B-17, Haroon Mansion
Khyber Bazar, Peshawar
Cell # 0300-5845943
And

Dated: 10.08.2015


(Mian Tajammal Shah)
Barrister, Peshawar.

CERTIFICATE:

Certified that as per instructions of my clients no such Service Appeal on behalf of the appellant has earlier been filed in this Honourable Service Tribunal on the subject matter.


Advocate.

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:

Service Appeal No. _____ / of 2015

Rehman Ullah son of Ajdar Khan... .. Appellant

VERSUS


Government of Khyber Pakhtunkhwa
through Secretary Health Department etc... .. Respondents

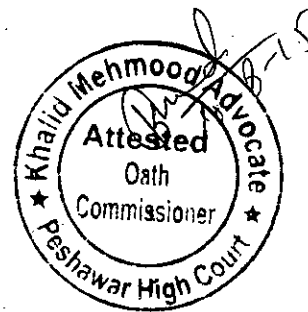
AFFIDAVIT

I, Rehman Ullah son of Ajdar Khan, Ex-Chowkidar RHC, Patrak District Upper Dir, do hereby solemnly affirm and declare that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.


Deponent

IDENTIFIED BY:


(Ghulam Nabi Khan)
Advocate, Peshawar.



148/86
15/11/99
dated Upper Dir the 21 /4/1999.

"A"

The Distt; Health officer,
Upper Dir.

To:-

Mr, Eshraullah S/O Ajjdar Khan,
Village and P.O. Patrak Teh; Kalkot,
Distt; Upper Dir.

6

Subject:-

APPOINTMENT

On the recommendation of Mr, Najmuddin Khan Local
MPA: Upper Dir, You are hereby offered a post of chowkidar ~~XXXXXX~~
in fix Rs/12000+300/- ~~XXXXXX~~ in BHU: Patrak, against the vacant
post.

Your appointment on purely temporary basis and your
service can be terminated at any time without any reason, the compe-
-tent authority.

Your appointment will be subject to your Medical,
fitness and production of Medical.

If you accept the offer on the above terms and
condition you should report to the Incharge BHU: Patrak, Upper
Dir against the vacant post within 15 days of the receipt of this
letter, which the order will be considered as cancelled.

DISTT: HEALTH OFFICER
UPPER DIR.

NO. 1289-71/1

Copy forwarded to the:-

1. Medical officer Incharge BHU: Patrak.
2. DAO: Upper Dir.
3. A/clerk of this office.

for information and n/action.

DISTT: HEALTH OFFICER
UPPER DIR.

NO. _____

Copy forwarded to Mr, Najmuddin Khan Local MPA: Upper
for information please.

DISTT: HEALTH OFFICER
UPPER DIR.

Ali

گڈت ضا۔ ۴۵۰ ملہ فڈلٹ ڈیپارٹمنٹ ڈیرہ

(7)

۱۱ B ۱۱

جوہر علی شوکانوس عسکر 288 فرغ 31-1-2011
بنام عسکر آئندہ رحمان اللہ جوہر
ڈیرہ ایپر

تھو

صنعتی عالی: لبریل عسکر ڈیرہ

① ڈیرہ ایپر نام جسدہ شدہ شوکانوس کو ڈیپارٹمنٹ
جلیقہ ڈائرکٹوریٹ میں سرسپل پروجرہ فرغ ہوا معلوم ہو سکتی ہے۔ اسے جوہر علی ڈیرہ سے
دینے پر وقت نوش نہ ملنے ہے۔

دفعہ ۱۰۷ کے تحت جوہر علی ڈیرہ THO جھیل انصاف سے نام دینے پر جوہر علی ڈیرہ کے علم کے مطابق
ڈیپارٹمنٹ ڈیرہ سے جوہر علی ڈیرہ اور THO جھیل انصاف اور equipments کے انتقال
اور یہاں نہ مہرا لیا ہے۔ اور نہ میں متعلقہ عسکر کے صاحبان کو کسی بھی اور نہ ہی بھی
اخراج سے عوام کی ہے۔

دفعہ ۱۰۷ کے تحت جوہر علی ڈیرہ جوہر علی ڈیرہ سے جوہر علی ڈیرہ اور انصاف خود جانتے ہے۔ یہ صاحبان ان
کے مابین لبریل سے ہیں۔

یہ کہہ کر انصاف ڈائرکٹوریٹ ڈیرہ سے جوہر علی ڈیرہ سے جوہر علی ڈیرہ میں اس عسکر کا نام چھوڑنے سے
کام کرنا ان کے انتقال اور یہاں جوہر علی ڈیرہ خود جانتے ہے نہ کی ہے۔ جس کا نام کاغذی کیسڈ ڈیرہ
رات گزرنے کیسڈ انہوں نے جاری ہے ڈائرکٹوریٹ ڈیرہ سے جوہر علی ڈیرہ میں ڈائرکٹوریٹ ڈیرہ کی
جوہر علی ڈیرہ کاغذی کیسڈ انہوں نے جاری ہے ڈائرکٹوریٹ ڈیرہ سے جوہر علی ڈیرہ میں ڈائرکٹوریٹ ڈیرہ کی
دوسرا نام ڈیرہ۔ جوہر علی ڈیرہ وہ نہ تھا نام بھی اور جانتے ہیں جوہر علی ڈیرہ میں کی ہے۔ جس کا نام ڈیرہ ڈیرہ
ڈیرہ ڈیرہ ڈیرہ سے جوہر علی ڈیرہ میں جھانڈنے عوام کی ہے۔

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ڈیرہ ڈیرہ ڈیرہ سے جوہر علی ڈیرہ میں جھانڈنے عوام کی ہے۔

ڈیرہ ایپر نام جسدہ شدہ شوکانوس کو ڈیپارٹمنٹ ڈیرہ سے جوہر علی ڈیرہ میں اس عسکر کا نام چھوڑنے سے
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ڈیرہ ڈیرہ ڈیرہ سے جوہر علی ڈیرہ میں جھانڈنے عوام کی ہے۔

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2-2011

THO جھیل انصاف ڈیرہ

ابتدائی اطلاعی رپورٹ

آئی اطلاع نسبت جرم قابل دست اندازی یا ایسی رپورٹ شدہ زیر دفعہ 153 مجموعہ ضابطہ فوجداری

8

ضلع ڈیرہ نالا	
تاریخ رپورٹ کے حصول کا سال	2010
تہیث	
دوران گرفتاری کا مقام	۱۱/۵۵ ۵/۶/۱۱
مقام کی تفصیل	۱۲ ہاٹ آباد
پتہ	۳۰۹
رہائشی کی تاریخ و وقت	۳۱۵۶
مقام کی تفصیل	۱۱/۵۵ ۵/۶/۱۱

ابتدائی اطلاع نیچے درج کرو

مقامی اطلاع دہانہ تھی کہ پی ۹۲۸۶/۱۱-۵۶ جس کا 2010 میں پولیس کے ساتھ ساتھ ڈاکٹر کے پاس
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لہذا صحت حاصل کی ہے۔ اس کی کاپی (مہربانی) آپ کو ارسال کی جا رہی ہے۔
مقدمہ 32 آف 2012

1
"D" U
عزت علیہ صوفی 23/4/2011
(نقل حکم)

409 P.P. کے نام ACE ڈیر
522 P.P. کے نام
0-4. 2.4.2015.

ORDER:-

Accused Rehmanullah, watchman, RHC Patrak District upper Dir present on bail, with his counsel while P.P. for state present. Arguments on application u/s 249-A Cr.Pc heard.

The present case was initially reported to the DPO upper Dir regarding the missing of Anesthesia machine, BP set mercury, Dental forceps and stop watch from RHC Patrak District upper Dir, whereafter Naqal mad No.8 dated 23.01.2011 was entered and inquiry under section 156(3) Cr.Pc was initiated. During inquiry sketch of the site of occurrence was prepared and certain record was taken into possession through recovery memos. During the inquiry opinion of APP was obtained who opined for transfer of inquiry to the ACE authorities. Accordingly record was received to Anti-Corruption Establishment and after permission of inquiry, the C.O. in light of the previous inquiry conducted by the Department as well as by the local police recommended for registration of case against accused Rehmanullah watchman. Resultantly, case FIR Ex.PA was registered. After his arrest in the case he was interrogated and challan for trial was submitted.

After receipt of challan accused was summoned and after observing provision u/s 241-A Cr.Pc accused was charge sheeted. He did not plead his guilt and claimed trial and thereafter prosecution examined PWs Mumtaz khan Medical Technician, Dr. Hidayatur Rehman Deputy DHO Malakand, Saiful Haq Medical Technician, Asghar khan No.556 FC, Umar khan clerk RHC Patrak, Abdul Hameed khan retired DSP, Sardar

2.4.2015.
Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

ATTESTED

EXAMINER
Court Of Special Judge
Anti Corruption KE

03/4/15

0-4. Continued

Wali khan S.I., Wasayat khan Rtd: Inspector and Muhammad Zaffar C.O. ACE. PW Dr. Daud Medical Officer RHC Patrak upper Dir has gone to Canada and could not be examined, whereafter case was stopped u/s 249 Cr.Pc but on the application of accused it was restored/revived and arguments on application filed earlier u/s 249-A Cr.Pc for acquittal of accused heard.

After hearing arguments and considering the record it is evident that PW-1 Mumtaz khan Medical Technician was incharge of the stores/equipments of the concerned RHC. He left the RHC for 3 days i.e. from 5th to 7th July, 2010 and took the keys alongwith him. In his absence Dr. Daud M.O. required ultrasound machine for an emergency patient and due to non handing over of charge and keys of store to other Medical Technician, the M.O. in the presence of staff of RHC including Saiful Haq Medical Technician, broke the lock of one of the store and brought out ultrasound machine and put a new lock and handed over the keys to accused Rehmanullah. When Mumtaz khan incharge returned to the RHC, accused Rehmanullah wanted to return the keys of store, the lock of which was earlier broken by the M.O. Dr. Daud but he refuse to receive it on the plea that he would first check the store. Mumtaz technician did not checked the store for about 2 months and when finally store was checked in the presence of doctor, the above mentioned machinery and equipments were noticed missing and he on 03.09.2010 made his report to the Medical Officer.

Page 2
2.4.2015.
Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

ATTESTED

From the evidence so far recorded, it came to lime light through the statement of PW Saiful Haq that PW Mumtaz khan, who was incharge of the store, left his duties without approval of his leave and at the same

EXAMINER
Court of Special Judge
Anti Corruption
Peshawar

03/4/15

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o-h Continued

time he did not hand over the charge to any other official of the RHC. Secondly, it is in the evidence that Mumtaz Khan return one day after the breaking of lock replaced by new one, however he was reluctant to take the keys. The inspection of store was delayed unnecessarily, seemingly to avoid the detection of missing of these equipments. Though record of the stock register is produced before the court, however despite the presence of 3 different rooms used for storage of machinery/equipments, but the record is silent as to in which room the anesthesia machine and other equipments were stored because evidence shows that the lock of the store No.3 was broken and only ultrasound machine was brought out by the M.O. concerned and new lock was put in the presence of all staff members and keys were handed over to Rehmanullah watchman as no other medical technician including Saiful Haq was ready to take the responsibility. This court is of the view that the M.O. concerned was required to have prepared a fresh list of the equipments/machinery lying in the store No.3 in the presence of staff members and may have got their signatures whereafter he may have handed over the key of the store No.3 to any of the responsible official but he failed to conduct proper procedure, resulting into the missing of valuable machinery and equipments.

[Signature]
2.4.2015.
Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

ATTESTED

[Signature]
EXAMINER
Court Of Special Judge
Anti Corruption Khyber Pakhtunkhwa Peshawar


03/4/15

From the cross examination of PW Saiful Haq it has surfaced that when finally Mumtaz Khan checked the store No.1, he stated that the anesthesia machine is missing. Now the important question at this juncture is that when the lock of the store No.3 was broken and new lock was installed then why Mumtaz Khan Medical Technician started checking of store No.1 and

o-h Continued

disclosed the missing of said machine. The obvious reason can be that it was not stored in store No.3 otherwise he would have first searched store No.3. This gives the impression that he knew that the anesthesia machine was lying in store No.1 and was misplaced/misappropriated earlier and he purposely delayed the checking of stores to avoid the detection of its non-availability.

From the available record and evidence, PW Mumtaz was responsible for the proper custody of stores. The record in respect of machinery and equipment was not properly maintained and there is nothing on record that the missing equipments and machinery was in store No.3. The lock was broken in the presence of M.O. and other staff and new lock was put there which means that the M.O. brought out only ultrasound machine and nothing else and he then handed over keys to accused Rehmanullah. There is no evidence that accused Rehmanullah opened the stores for any purpose. PW Mumtaz despite arrival on the very next day refused to receive the key of new lock of store No.3 which create suspension about him. The opening of store No.1 after 2 months create further doubt about his involvement. Accused Rehmanullah was only a watchman and was not to be handed over the keys, but it was more safe that the M.O. concerned should have retained the keys with him. From the entire scenario, a lack of trust of all the staff members upon one another is visible. After registration of case, prosecution was to bring home the guilt of accused facing trial beyond shadow of doubt however no credible and conscicus inspiring evidence is brought on record to connect the accused Rehmanullah with the commission of crime, hence this application is


2.4.2015.
Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

ATTESTED


EXAMINER
Court Of Special Judge
Anti Corruption KPK Peshawar

09/4/15

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o-c. Continued

accepted and accused Rehmanullah is acquitted of the charges leveled against him.

He is on bail and is relieved and his sureties are also discharged.

Before parting this judgment, as sufficient losses have been caused to the Public Ex-chequer therefore, the Executive District Officer Health Dir upper is within his power to order for departmental inquiry to nab the culprit/culprits and recover the losses.

A copy of this judgment be forwarded to him for appropriate action.

Order pronounced and the file of the case be consigned to the record room after its necessary completion.

Announced.
Swat.
02.04.2015.



[Signature]
2.4.2015.
Special Judge,
Anti-Corruption KPK,
(Camp at Swat).

ATTESTED

EXAMINER
Court Of Special Judge
Anti Corruption KPK

02/4/15

NO. 444 For insurance stamps affixed except uninsured letters of...

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Registered

EL

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH DISTRICT UPPER DIR.

FINAL SHOW CAUSE NOTICE/NOTICE FOR PERSONNEL HEARING.

12

Whereas I Dr: Hidayat-Ur-Rehman, Executive District Officer Health District Upper Dir in the capacity of competent authority under Section 2(a) of the Khyber Pukhtoonkhwa , Removal from services (Special Power) Ordinance 2000 and amended 2001, read with Notification No. SOR-II(S&GAD) 2000-Vol-III, Dated, 28-09-2000, am of the considered opinion that you Rehman Ullah Chowkidar has been proceeded against on account of miss-conduct as prescribed in Section 3 of the said Ordinance for the following acts of Omissions and Commission.

"That you are directly involved in missing of items from Store at Cat: "D" Hospital Patrak Upper Dir. This act on your part is against the discipline of Health Department and account of serious miss-conduct".

And by reason of above, you appear to be guilty of miss-conduct within the meaning of Section 3 of Khyber Pukhtoonkhwa Removal from Service (Special Power) Ordinance 2000 amended up to date for the said omission and commission on your part and you are liable to disciplinary action which may involve imposition of major penalty as prescribed in Section 3 of the said Ordinance.

Now therefore, you Rehman Ullah Chowkidar are hereby called upon to explain your position in support of your defense and written reply be sent to the Undersigned within five (05) days after issuance of this letter. If you desire to be heard in person, you should appear before the Undersigned on

2-5-011

for personal hearing in your defense in the case. In case of failure, it will be presumed that you have no defense to offer or you have declined to offer the same and accept the charge and as such ex-part decision/action will be taken against you.

No 1300-01

Patrol enquiry.

Executive District Officer,
Health District Upper Dir.

Dated 18/04/2011

Copy to the:-

- 1 Incharge Medical Officer Category "D" Hospital Pattrak for information.
- 2 Mr: Rehman Ullah Chowkidar Cat: "D" Hospital Patrak Upper Dir for strict compliance.

S/D
DFA

Executive District Officer,
Health District Upper Dir.

o/c

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Special Enquiry File

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13

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH DISTRICT DIR UPPER.

DISCIPLINARY ACTION.

I Dr. Hidayat-Ur-Rahman Executive District Officer Health, Upper Dir, as competent authority, am of the opinion that Mr. Rahman Ullah Chowkidar, attached to Category "D" Hospital Upper Dir, has rendered himself liable to be proceeded against as he committed the following acts of omissions within the meaning of section 3 (1) (a) of the Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000 as amended vide Khyber.Pakhtunkhwa, Removal from Service (Special Power) (Amendment) Ordinance 2001:

"That he is involved in missing of Anesthesia Machine and other parts of equipments from Category "D" Hospital Patrak Dir Upper, as per enquiry team report, being Chowkidar of the Hospital he is responsible for misappropriation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an inquiry officer consisting of the following are appointed/ constituted under section 5 of the Ordinance.

a. Dr. Rahat Ullah Medical Officer Category "D" Hospital Barawal.

3. The Inquiry Officer shall, in accordance with the provision of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, with 15 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accuse and a well conversant representative of the Category "D" Hospital Patrak, Upper Dir shall join the proceedings on the date, time and place fixed by the inquiry Officer.

Executive District Officer
Health District Dir Upper

No. 718-22 /EDO/Enquiry,

Dated Dir Upper,

the 3 /02/2011.

Copy of the above is forwarded to:

1. The Director General Health Services Khyber Pukhtunkhwa Peshawar for information w/r to his letter No. 1082/Personnel dated, 31-01-2011.
2. The District Coordination Officer Upper Dir.
3. Dr. Rahat Ullah Medical Officer Cat: "D" Hospital Barawal Dir Upper being the Enquiry Officer for initiating proceeding against the accused immediately.
4. The Incharge Category "D" Hospital Upper Dir, for information and necessary action.
5. Mr. Rahman Ullah Chowkidar Category "D" Hospital Patrak with the direction to appear before the Enquiry Officers on the date time and place fixed by him for the purpose of the Enquiry c/o EDO Health Office Upper Dir or Category "D" Hospital Barawal.

Submitted per enquiry

11/3/2011

Executive District Officer
Health District Dir Upper

O/C

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OFFICE ORDER.

1. WHEREAS, Rahman Ullah Chowkidar attached to Category "D" Hospital Patrak, Upper Dir, was proceeded against under the NWFP Removal from service (Special Power) amended Ordinance, 2000 for the charges mentioned in the charge sheet.

2. WHEREAS, he submitted reply to the Charge Sheet.

3. WHEREAS, as per enquiry report conducted under Section-5 of the RSO 2000, missing of Equipments from Main Store of Category "D" Hospital Patrak, (as per detail given below) proved against him.

1. Anesthesia Machine.
2. BP Set Mercury.
3. Some Dental Forceps.
4. Pathology Stop Watch.

4. WHEREAS, a show cause notice was served upon him vide this office letter No. 1300-01/Patruk Enquiry dated, 18-04-2011.

5. WHEREAS, he replied to the show cause notice, which was not satisfactory.

6. WHEREAS, he was personally heard on 02-05-2011 by the undersigned but he could not proved himself as innocent.

7. NOW, therefore, after completion of all codal formalities and on ascertaining the facts that the charges leveled against him have been proved, I, Dr. Hidayat-Ur-Rahman Executive District Officer Health Upper Dir being competent authority in exercise of the power under Rule-3 of the NWFP, Removal from service (special Powers, amended ordinance, 2000, am pleased to impose the major penalty of Removal from service upon him (Rahman Ullah Chowkidar) with immediate effect.

*Executive District Officer
Health District Dir Upper.*

No. 2452-56/PF: Ikram Khan. Dated Dir Upper, the 17/06/2011.

Copy to:-

1. The Director General Health Services Khyber Pakhtunkhwa Peshawar.
2. The District Coordination Officer Upper Dir.
3. The Medical Officer Incharge Category "D" Hospital Patrak for information and with the direction to approach to District Police Officer Dir Upper to recover the original Machines from the accused or original cost of the stolen Equipments and vacate the quarter from Mr. Rahman Ullah with immediate effect under intimation to this office.
4. The District Accounts Officer Upper Dir.
5. Mr. Rahman Ullah Ex- Chowkidar Category "D" Hospital Patrak Dir Upper.

*Executive District Officer
Health District Dir Upper.*

Handwritten signature/initials

کتاب خانہ - EDOCH - 16-04-2015

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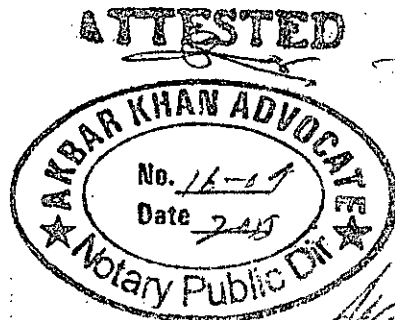
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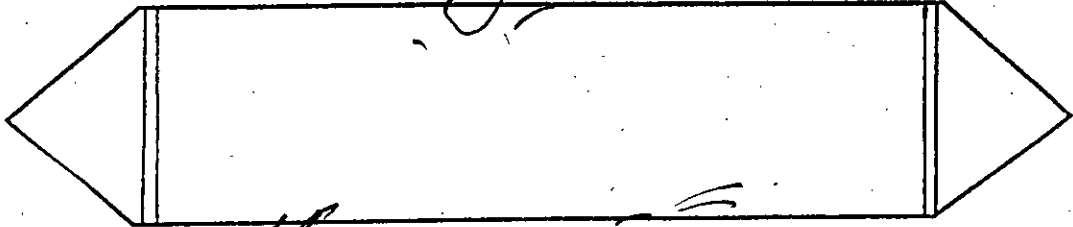
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16-04-2015

بعدالت سرور مشورہ



موزخہ
مقدمہ
دعویٰ
جرم

10
رکن
بنام

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کیلئے محمد علی احمد کے نام سے درخواست کی گئی ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو کسی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 10 ماہ 20

بمقام
کے لئے منظور ہے۔
Accept

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO..... 899 OF 2015.



REHMAN ULLAH.....Appellant/Petitioner.

VERSUS

THROUGH SECRETARY HEALTH & OTHERS.....Respondents.

I N D E X

<u>S.NO.</u>	<u>DESCRIPTION OF DOCUMENTS.</u>	<u>ANNEXURE</u>	<u>PAGES.</u>
1.	Parawise comments on behalf of Respondents No. 01 to 03		01-02
2.	Affidavit		03
3.	Charge Sheet.	A	04
4.	Enquiry Report.	B	5-6
5.	Show Cause Notice.	C	07
6.	Establishment Code Page No. 174.	D	08


(Dr. Iftikhar Uddin)
District Health Officer Upper Dir
CNIC No 15201-0580439-9 

①

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

APPEAL NO..... 899 OF 2015.

REHMAN ULLAH.....Appellant/Petitioner.

VERSUS

THROUGH SECRETARY HEALTH & OTHERS..... Respondents.

PARA WISE REPLY ON BEHALF OF RESPONDENT NO. 1 TO 3.

Respect fully Sheweth:

Back Ground.

Humbly submitted that Some Equipments namely Anesthesia Machine, BP set Mercury, Dental Forceps and Pathology Watch were theft in the main store of Category 'D' Hospital Patrak during the year 2010 during duty hours of appellant, due to which loss occurred to Government and the needy patients of the area have badly suffered.

Preliminary Objection:

1. That the appeal is time bared
2. That the appellant has got no cause of action.
3. That the appellant has been estopped by his own conduct to file the appeal.
4. The Honorable Tribunal has no jurisdiction to entertain the appeal.

FACTS:

PARA No.1. Correct.

PARA No.2. Incorrect. The appellant had not performed duties properly and committed misconduct and negligence as is evident from charge Sheet (Attached as **Annexure- "A"**). Inquiry report (**Annexure "B"**) and Show Cause Notice as (**Annexure-"C"**).

PARA No.3. Correct, to the extent that he has submitted reply to the show cause notice but his reply was not tenable and not satisfactory, therefore the charge leveled against him is proved and as such he was removed from service.

PARA No.4. Incorrect. As per Departmental proceeding, initiated and concluded after fulfilling the laid down procedure, he has been removed from service. As per Establishment Department letter No.OP.2(2) 82-11544, dated, 03-05-1982 Establishment Code Page No. 174 Sl.No. 15 Court and Departmental proceeding can run parallel, (Attached

2

PARA No.5. As explained above in Para 4 above.

PARA No.6. As explained above in Para 1 to 4.

PARA No.7. Incorrect. An application was submitted by the appellant against the order of this office under the rules, he was required to lodge such appeal to the next higher, therefore, his application has been filed.

PARA No.8. No comments.

GROUND:

- A. Incorrect. As explained above he was removed from service after fulfilling the formalities laid down in the law, rules and procedures.
- B. Incorrect. The charges were proved against him as is evident from the inquiry report. (already Annexed as Annexure "A" above)
- C. Incorrect. He was found involved in the charges leveled against him as is evident from Charge Sheet, inquiry report and Show Cause Notice. (already Annexed as Annexure "A", "B" and "C" above)
- D. Incorrect. Inquiry was properly conducted and the procedure of inquiry was dully observed. He was personally heard as is evident from inquiry report Para No. 5.
- E. Incorrect. No malafide intention was involved in initiating and concluding disciplinary action against him. Had the incidence of stealing of Anesthesia Machine and equipment's not occurred, he would have not faced such consequences.
- F. Incorrect. As explained in Para -4 of the facts.
- G. Incorrect. As explained in Para -3 of the facts.
- H. Incorrect. As explained in Para -1 to 4 of the facts and Para (a) to (e) of the grounds.
- I. Incorrect. As explained in Para-1 to 4 of the facts and Para (a) to (e) of the grounds.
- J. Incorrect. As explained in the Para (d) above. No irregularity was committed in the inquiry proceedings. As is evident from Para 10 of the inquiry report.

In the light of above, his instant time bared appeal may very graciously be dismissed with cost.

[Signature]
**District Health Officer,
District Dir/Upper
(Respondent No.3.)**

[Signature]
**Director General Health Services,
Khyber Pakhtunkhwa Peshawar
(Respondent No.2.)**

[Signature]
**Secretary Health Government,
Of Khyber Pakhtunkhwa Peshawar
(Respondent No.1.)**

21/12/15

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO..... 899 OF 2015.

REHMAN ULLAH.....Appellant/Petitioner.

VERSUS

THROUGH SECRETARY HEALTH & OTHERS.....Respondents.

AFFIDAVIT

I, **Dr. Iftikhar Uddin**, District Health Officer District Dir Upper do hereby solemnly affirm and declare that the contents of the joint parawise comments at Page-1&2 submitted on behalf of Respondent No. 01 to 03 is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court.

(Dr. Iftikhar Uddin)
District Health Officer Upper Dir
CNIC No 15201-0580439-9

Identified by

**Additional Advocate General
Service Tribunal Khyber Pakhtunkhwa
Peshawar.**

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH DISTRICT DIR UPPER.

DISCIPLINARY ACTION.

I Dr. Hidayat-Ur-Rahman Executive District Officer Health, Upper Dir, as competent authority, am of the opinion that Mr. Rahman Ullah Chowkidar, attached to Category "D" Hospital Upper Dir, has rendered himself liable to be proceeded against as he committed the following acts of omissions within the meaning of section 3 (1) (a) of the Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000 as amended vide Khyber Pakhtunkhwa, Removal from Service (Special Power) (Amendment) Ordinance 2001:

"That he is involved in missing of Anesthesia Machine and other parts of equipments from Category "D" Hospital Patrak Dir Upper, as per enquiry team report, being Chowkidar of the Hospital he is responsible for misappropriation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an inquiry officer consisting of the following are appointed/ constituted under section 5 of the Ordinance.

a. Dr. Rahat Ullah Medical Officer Category "D" Hospital Barawal.

3. The Inquiry Officer shall, in accordance with the provision of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, with 15 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accuse and a well conversant representative of the Category "D" Hospital Patrak, Upper Dir shall join the proceedings on the date, time and place fixed by the inquiry Officer.

[Signature]
Executive District Officer
Health District Dir Upper

No. 718-22 /EDO/Enquiry,

Dated Dir Upper,

the 3 /02/2011.

Copy of the above is forwarded to:

1. The Director General Health Services Khyber Pukhtunkhwa Peshawar for information w/r to his letter No. 1082/Personnel dated, 31-01-2011.
2. The District Coordination Officer Upper Dir.
3. Dr. Rahat Ullah Medical Officer Cat: "D" Hospital Barawal Dir Upper being the Enquiry Officer for initiating proceeding against the accused immediately.
4. The Incharge Category "D" Hospital Upper Dir, for information and necessary action.
5. Mr. Rahman Ullah Chowkidar Category "D" Hospital Patrak with the direction to appear before the Enquiry Officers on the date time and place fixed by him for the purpose of the Enquiry c/o EDO Health Office Upper Dir or Category "D" Hospital Barawal.

[Signature]
Executive District Officer
Health District Dir Upper.

*Sw, DDA
Submitted for enquiry*

verified by [Signature] 11/3/2011

c/c

**District Health Officer
Upper Dir**

Inquiry against Mr. Rahmanullah chowkidar cat D hospital Patrak

As per directives of the EDO Health office letter NO.718-22 dated 3/3/11, I went to Patrak for the said inquiry on 21/03/11. The following facts were found.

1. Four persons were interviewed from the hospital including DR Daud MO incharge, Mr Mumtaz medical technician, Mr. Saif ul Haq JCT Technician and Mr. Rahmanullah Chowkidar.
2. According to the hospital record the Store incharge Mumtaz Khan was on leave on 5,6,7 july 2010. His application for leave was properly signed and forwarded to the district office for sanction.

Room .1 (Door)	Room.2 (Door)	Room.3 (Door)
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3. During his leave period ,Dr.Daud broke the lock of Room NO.3 in which the Ultrasound machine was lying and got it out as he needed it for some patients in emergency.
4. After that ,he applied a new lock to the gate of that room and handed over the keys to Rahman ullah chowkidar in the presence of some of the staff members of the hospital, the recorded statement of these persons duly signed by them is attached herewith.
5. According to the verbal statement of the chowkidar, he tried to hand over the keys to the store incharge Mumtaz khan but he he refused to take it as such and told him that he will do so only after proper checking of the store in front of the medical officer incharge.
6. As per statement of the Medical officer incharge and the store incharge, the chowkidar kept the store keys with himself for about a month and did not informed the incharge doctor about it.

verified by

[Signature]
**District Health Officer
Upper Dir**

- (411) (B)
7. As Dr Daud was on leave after 7/7/10 for three days and Mr.Mumtaz khan,store incharge was busy in the Polio campaign duty later on,So they had to check the store after this, which was done in the presence of the MO incharge and some other staff members ,the signed statements are attached with this report.
 8. It was found that some of the items including the anesthesia machine was missing from the store.It was noted that the said machine was missing from the same room(Room.3) the keys of which were being handed over to the Rahmanullah chowkidar.
 9. As the MO incharge had replaced the old lock after being broken with a new one and handed over the keys to the chowkidar at the same time in front of the staff members,so it seems certain that the chowkidar was involved in whatever happened later on.There are no evidence of either the lock was again broken by someone else nor any other damage to the door was noted.The windows of the room are permanently closed with concrete already.
 10. Mr Rahman ullah cohwkidar was asked to provide his statement in written form explaining his current position but he failed to do so even after waiting for about two weeks,after which this report is forwarded to the EDO health office with the following recommendations.
 - In my opinion as the chowkidar Mr Rahmanullah seems directly involved in the incidence as the keys of the store from which the items were missing were in his possession.It is suggested that major penalty may be imposed on him as will as a proper FIR should be launched against him in the Police and efforts should be made to recover the missing items.
 - As the MO incharge has never remained on an independent post of responsibility like this one,as incharge of the institution,he should be given strict warning for his negligence in this matter which may probably be due to his lack of experience regarding such type of situations.

Dated: 06/04/11

verified by

[Signature]
**District Health Officer
Upper Dir**

[Signature]
Dr.Rahatullah
Medical Officer
Cat.D Hospital
Barawal
(Inquiry officer)

[Signature]
06/04/11

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH DISTRICT UPPER DIR.
FINAL SHOW CAUSE NOTICE/NOTICE FOR PERSONNEL HEARING.

Whereas I Dr. Hidayat-Ur-Rehman, Executive District Officer Health District Upper Dir in the capacity of competent authority under Section 2(a) of the Khyber Pukhtoonkhwa, Removal from services (Special Power) Ordinance 2000 and amended 2001, read with Notification No. SOR-II(S&GAD) 2000-Vol-III, Dated, 28-09-2000, am of the considered opinion that you Rehman Ullah Chowkidar has been proceeded against on account of miss-conduct as prescribed in Section 3 of the said Ordinance for the following acts of Omissions and Commission.

"That you are directly involved in missing of items from Store at Cat: "D" Hospital Patrak Upper Dir. This act on your part is against the discipline of Health Department and account of serious miss-conduct".

And by reason of above, you appear to be guilty of miss-conduct within the meaning of Section 3 of Khyber Pukhtoonkhwa Removal from Service (Special Power) Ordinance 2000 amended up to date for the said omission and commission on your part and you are liable to disciplinary action which may involve imposition of major penalty as prescribed in Section 3 of the said Ordinance.

Now therefore, you Rehman Ullah Chowkidar are hereby called upon to explain your position in support of your defense and written reply be sent to the Undersigned within five (05) days after issuance of this letter. If you desire to be heard in person, you should appear before the Undersigned on 25.01 for personal hearing in your defense in the case.

In case of failure, it will be presumed that you have no defense to offer or you have declined to offer the same and accept the charge and as such ex-part decision/action will be taken against you.

No 1300-01 *patrak enquiry.* *Dated 18/04/2011*
Executive District Officer,
Health District Upper Dir.

- Copy to the:-
- 1 Incharge Medical Officer Category "D" Hospital Pattrak for information.
 - 2 Mr. Rehman Ullah Chowkidar Cat: "D" Hospital Patrak Upper Dir for strict compliance.

SV
DFA

Executive District Officer,
Health District Upper Dir.
o/c

Handwritten signatures and notes
Special Enquiry File

District Health Officer
Upper Dir

(Authority: Circular letter No.SORII (S&GAD)3(4)/78, dated 3rd October, 1984.

Stoppage of increment under Government Servants (Efficiency & Discipline) Rules, 1973.

Sl.No.14

Instances have come to the notice of the Government where the penalty of stoppage of increment under the NWFP Government Servants (Efficiency & Discipline) Rules, 1973, has been imposed on Government Servants, who have reached the maximum of the pay scale, thus making the penalty ineffective. I am accordingly directed to request that the competent authorities may, in future, kindly keep in view the stage of the pay scale at which a Government servant is drawing pay before imposing the penalty of stoppage of increment on him under the above rule.

(Authority: Circular letter No.SORII(S&GAD)5(29)/86, dated 27th December, 1986.

Parallel running of Departmental / Judicial Proceedings.

Sl.No.15

The Law Department vide their U.O No.Op.2(2)82-11544, dated 3-5-1982, have advised as under:-

"Court & Departmental proceedings can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even Departmental inquiry can be held subsequently on the same charges of which Government servant has been acquitted by a Court. The two proceedings are to be pursued independent of each other and it is not necessary to pend departmental proceedings till the finalization of judicial proceedings".

(Authority: Law Department's U.O No.Op.2(2)82-11544, dated 3.5.1982)

Departmental Proceedings vis-a-vis Judicial Proceedings.

Sl.No.16

The question as to whether or not a departmental inquiry and judicial proceedings can run parallel to each other against an accused officer/official has been examined in consultation with the Law Department.

2. It is hereby clarified that Court and Departmental proceedings may start from an identical charge(s) and can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Government servants has been acquitted by a Court. The two proceedings are to be

checked by

**District Health Officer
Upper Dir**

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT
CAMP COURT SWAT.

APPEAL NO _____ 899 OF 2015.

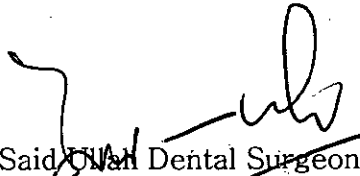
Rehman ullah _____ Appellant/Petitioners.

Versus

Through secretary Health and others _____ Respondents.

AFFIDAVIT

I Dr, Said Ullah Dental Surgeon do hereby solemnly affirm and declare that the contents of the joint Parawise comments at page 1 & 2 submitted on behalf of respondent No. 1 to 3 is true and correct to the best of my knowledge , belief and that nothing has been concealed from this honorable Court.


Dr, Said Ullah Dental Surgeon,
Cat: D Hospital Wari Dir Upper
CNIC.

04/02/16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT
CAMP COURT SWAT.

APPEAL NO _____ 899 OF 2015.

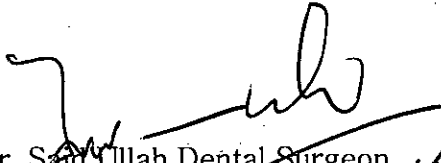
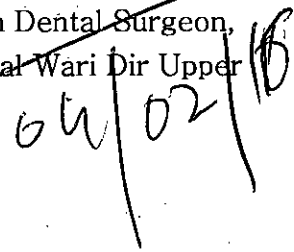
Rehman ullah _____ Appellant/Petitioners.

Versus

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Dr, Said Ullah Dental Surgeon,
Cat: D Hospital Wari Dir Upper
CNIC. 

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. 899 / of 2015

Rehman Ullah son of Ajdar Khan... .. Appellant

VERSUS

Government of Khyber Pakhtunkhwa
through Secretary Health Department etc ... Respondents

REJOINDER ON BEHALF OF THE APPELLANT.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

All the Preliminary Objections as raised are wrong, hence denied. The appeal is within time, with cause of action and this Honourable Tribunal has got the jurisdiction to entertain and adjudicate upon the matter.

ON FACTS:

1. Para 1 needs no comments.
2. Wrong and denied. The appellant has been performing his duties properly and has committed no misconduct or negligence. The charge sheets served upon the appellant are with no substance and the appellant has got nothing to do with the event as mentioned in the charge sheets.
3. Has been admitted correct, however, no proof whatsoever has been shown against the appellant for the misconduct as mentioned in the above said charge sheets.
4. Wrong and denied. The appellant has been honourably acquitted from the criminal Court, as no proof whatsoever has been preferred before

the said Court, however, the departmental proceedings were initiated on the malafide intentions and the appellant has been removed without any proof against him.

5. Needs no comments.
6. Needs no comments.
7. Wrong and denied. The objection raised in para No.7 is baseless and without any force.
8. Needs no comments.

GROUND:


- a. Wrong and denied. The appellant has been removed from service without any lawful and legal reason.
- b. Wrong and denied. No charge whatsoever has been proved against the appellant, as no inquiry as prescribed under the rules has been initiated/proceeded against the appellant.
- c. Annexures A, B and C are baseless and without any legal force.
- d. Wrong and denied. No inquiry whatsoever has been proceeded against the appellant.
- e. Wrong and denied. All the process/proceedings were based on the malafide intention and the appellant has nothing to do with any theft caused when he was on his duty.
- f. Needs no comments.
- g. Needs no comments.
- h. Needs no comments.
- i. Needs no comments.

j. Wrong and denied. All the process and procedure whatsoever has been adopted by the respondents was irregular and not according to law.


It is, therefore, humbly prayed that in view of the above said submissions appeal of the appellant may kindly be accepted as prayed for.

Appellant

Through:


(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan
B-17, Haroon Mansion
Khyber Bazar, Peshawar
Cell # 0300-5845943

And


(Mian Tajammal Shah)
Barrister, Peshawar.

Dated: 20/07/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. 899 / of 2015

Rehman Ullah son of Ajdar Khan... .. Appellant

VERSUS

Government of Khyber Pakhtunkhwa
through Secretary Health Department etc... .. Respondents

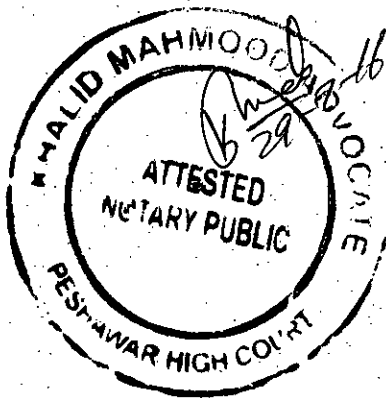
AFFIDAVIT

I, Rehman Ullah son of Ajdar Khan, Ex-Chowkidar RHC, Patrak
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the accompanying **Rejoinder** are true and correct to the best of my knowledge
and belief and nothing has been concealed from this Honourable Tribunal.

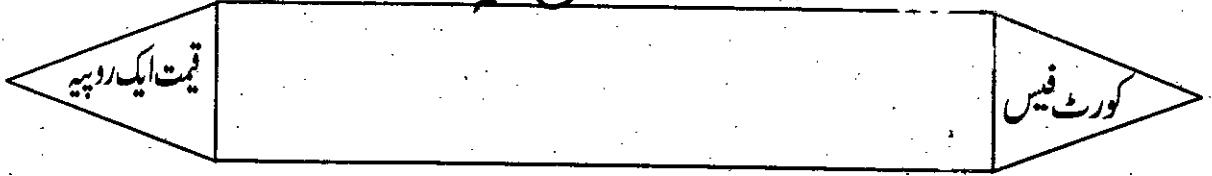
W. C. P.
Deponent

IDENTIFIED BY:

Gul Nabi Khan
(Ghulam Nabi Khan)
Advocate, Peshawar.



بعدالت ضابطہ سروریشنل لٹریچر ایکسپریس کورٹ سوان



مورخہ 09 اگست 2015ء منجانب ریپرائزنٹ

مقدمہ لائن الٹریچریشن بنام صدیق و غفرہ

دعویٰ

جرم

ایسٹ 898/2015
باعت تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام کیس کورٹ سوان کیلئے / عنہم ہر ارجحان / اصرار لائن الٹریچر ایکسپریس مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہر جانہ التوا ایسے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم 09 ماہ اگست 2015ء

العبد گواہ شاہ عبدالعبد

Accepted and Accepted by

بمقام سروریشنل لٹریچر ایکسپریس کے لئے منظور ہے

آفس: ملٹین جیو خان بلازہ
گورد سوان
0333-9297146
0346-9452885

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. 899 / of 2015

Rehman Ullah son of Ajdar Khan... ... Appellant

VERSUS

Government of Khyber Pakhtunkhwa
through Secretary Health Department etc ... Respondents

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the said Court, however, the departmental proceedings were initiated on the malafide intentions and the appellant has been removed without any proof against him.

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- e. Wrong and denied. All the process/proceedings were based on the malafide intention and the appellant has nothing to do with any theft caused when he was on his duty.
- f. Needs no comments.
- g. Needs no comments.
- h. Needs no comments.
- i. Needs no comments.

j. Wrong and denied. All the process and procedure whatsoever has been adopted by the respondents was irregular and not according to law.


It is, therefore, humbly prayed that in view of the above said submissions appeal of the appellant may kindly be accepted as prayed for.

Appellant

Through:


(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan
B-17, Haroon Mansion
Khyber Bazar, Peshawar
Cell # 0300-5845943

And


(Mian Tajammal Shah)
Barrister, Peshawar.

Dated: 2.07.2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. 899 / of 2015

Rehman Ullah son of Ajdar Khan... ... Appellant

VERSUS

Government of Khyber Pakhtunkhwa
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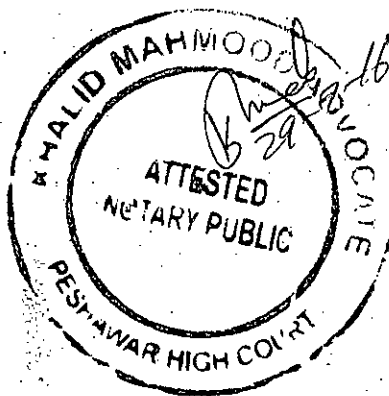
AFFIDAVIT

I, Rehman Ullah son of Ajdar Khan, Ex-Chowkidar RHC, Patrak
District Upper Dir, do hereby solemnly affirm and declare that the contents of
the accompanying **Rejoinder** are true and correct to the best of my knowledge
and belief and nothing has been concealed from this Honourable Tribunal.

W/C/S
Deponent

IDENTIFIED BY:

Gul Nabi Khan
(Ghulam Nabi Khan)
Advocate, Peshawar.



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1885 /ST

Dated 11 / 11 / 2016

To

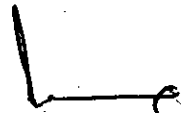
The E.D.O Health,
Dir Upper.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 8.11.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.