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Sr.	Date of	Order or other proceedings with signature of Judge or Magistrate
No	order/	
1	proceeding	
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1	2	3
·		
		BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
		AT CAMP COURT ABBOTTABAD Service Appeal No. 1186/2014
		Service Appear No. 1100/2014
		Date of Institution 25.09.2014
		Date of Decision 19.09.2018
	·	Muhammad Bashir son of Tawus Khan Village Obaid Kalli, Tehsil
		Tangi District Charsadda.
		Appellant Versus
:	-	versus
		1. The Senior Member of Board of Revenue, Khybe
•		Pakhtunkhwa.
/.		2. The Commissioner, Hazara Division, at Abbottabad.
	19.09.2018	3. The Deputy Commissioner Kohistan, District Kohistan.
S,		
5		Respondents
•		Mr. Subhan SherChairman
		Mr. Muhammad Hamid MughalMember
-		
		<u>JUDGMENT</u>
		MUHAMMAD HAMID MUGHAL, MEMBER: Appellan
		with governal and Mr. Haman Chanilagement District Attansas 6
	j	with counsel and Mr. Usman Ghani learned District Attorney for
		respondents present.
		2. The appellant (Ex-Patwari/Naib Tehsil Accountant) has filed
_		
		the present appeal u/s 4 of the Khyber Pakhtunkhwa Service
		Thibanal Ass 1074
		Tribunal Act, 1974 against the order dated 13.05.2014 whereby he
		was removed from service on the ground of absence from duty w.e.
	-	was removed from service on the ground of absence from duty w.e.
•		01.06.2013.
		3. Learned counsel for appellant while assailing the impugned
] :	

order argued that the appellant has not been treated in accordance with law and rules on the subject and was removed from service without observing the codal formalities of charge sheet/statement of allegation and Show Cause Notice. Further argued that no regular inquiry was conducted in the matter, similarly no chance of personal hearing and defense was given to appellant.

As against that learned District Attorney argued that the appellant was appointed in the year 2010 and he was granted one hundred and twenty (120) days earned leave w.e.f 01.02.2013 to 31.05.2013 but on the expiry of leave, he did not join his duty and resultantly he was charge sheeted on 29.10.2013 for having remain absent from 01.06.2013 to 30.08.2013. Further argued that inquiry was conducted by the inquiry officer who gave findings that the appellant absented himself from duty after expiry of leave, willfully, arbitrary and unlawfully and that the inquiry officer suggested imposition of major penalty against the appellant. Further argued that the competent authority however instead of awarding major penalty, gave the appellant final chance to continue the service. Further argued that despite leniency by the competent authority the appellant did not mend his attitude and again absented himself therefore the competent authority had no other option but to issue notices under the Khyber Pakhtunkhwa Civil Servants Efficiency & Disciplinary Rules 2011 on his home address and also in the newspapers on 15.03.2014 but the appellant did not attend the office and this led to the issuance of impugned order of removed from



service dated 13.05.2014.

- 5. Arguments heard. File perused.
- There is n no dispute that the appellant remained absent from 6. duty w.e.f 01.06.2013 without any permission. Perusal of the inquiry report dated 23.09.2013 would show that the appellant joined the inquiry proceeding, submitted his reply before the inquiry officer and according to the findings of the inquiry officer the appellant has failed to show valid reason/documentary proofs regarding his willful absence from duty. According to the inquiry officer the pretexts i.e. engagement in domestic affairs and illness of father of the appellant etc were not valid and satisfactory reasons. After the inquiry proceedings, absence notices were also issued through publication in the newspapers on 15.03.2014 and finally the impugned order of removal from service was issued on 13.05.2014. Order dated 26.08.2014 regarding rejection of departmental appeal is also annexed with the written reply of the respondents. Learned counsel for the appellant remained unable to demonstrate that the impugned order is illegal, arbitráry or is otherwise based on malafide. In view of the circumstances of the case this Tribunal is constrained to hold that the appellant has not been able to make out the case in his favor. Resultantly the present service appeal for the reinstatement of the appellant in service is hereby rejected. The punishment of removal from service shall however take effect from the date of issuance of original impugned order i.e. w.e.f 13.05.2014. Absence period shall be treated as unauthoriz



absence without pay. The present service appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

(Muhammad Hamid Mughal) Member

ANNOUNCED 19.09.2018 (Subhan Sher) 19.9. 20/0 Chairman 19.09.2018

Appellant with counsel and Mr. Usman Ghani learned District

Attorney for respondents present.

Vide separate judgment of today of this Tribunal placed on file, the present service appeal for the reinstatement of the appellant in service is hereby rejected. The punishment of removal from service shall however take effect from the date of issuance of original impugned order i.e. w.e.f 13.05.2014. Absence period shall be treated as unauthorized absence without pay. The present service appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

(Muhammad Hamid Mughal)
Member

(Subhan Sher)
Chairman

ANNOUNCED 19.09.2018 Neither appellant nor his counsel present. M/S Attaullah, Assistant Secretary, Bahadar Khan, Assistant and Noorul Wahaj, Assistant on behalf of the respondents alongwith Mr. Usman Ghani, District Attorney present. Case to come up for arguments/further proceedings on 20.07.2018 before the D.B at camp court, Abbottabad.

Member

Chairman Camp Court, A/Abad

20.07.2018

Appellant Muhammad Bashir in person present. Mr. Bahadar Khan, Assistant and Mr. Noorul Wahaj, Assistant on behalf of the respondents alongwith Mr. Usman Ghani District Attorney present. Appellant made a request for adjournment that his counsel is not present. Granted. To come up for arguments on 19.09.2018 before the D.B at camp court, Abbottabad.

/// Member Chairman Camp Court, A/Abad 02.03.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present. Arguments already heard. Record perused.

Vide our detailed judgment of today in connected appeal No. 562/2016 entitled "Rahim-ud-Din Vs. Inspector General of Police and others", this appeal be placed before the D.B for arguments on 19.04.2018, at Camp Court, AJAbad

(M. Hamid Mughal)

Member

(M. Amin Khan Kundi) Member

(Ahmad Hassan) Member

> (Gul Zet Khan) Member

19.04.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Attaullah, Asstt. Secretary and Bahadar Khan, Asstt. for the respondents present. Counsel for the appellant seeks adjournment. Granted. To come up for arguments on 18.07.2018 before the D.B at camp court, Abbottabad.

Member

Chairman
Camp court, A/Abad

Counsel for the appellant and Addl. AG for the respondents present. Counsel for the appellant submitted before the court that the impugned order has been given retrospective effect and similar appeals have been fixed for 26.2.2018 before the larger bench at principal seat to decide the issue of retrospectivity. This appeal is also fixed before the larger bench at principal seat for arguments on 26.02.2018.

Chairman Camp court, A/Abad.

26.02.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard. To come up for order on 2.3.2018 before the Larger Bench.

> (M. Hamid Mughal) Member

> > (M. Amin Khan Kundi) Member

Chairman

(Ahmad Hassan) Member

(Gul Zeb Khan)

Member

13.03.2017

Clerk of counsel for the appellant and Mr. Sattar Muhammad, Assistant alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Rejoinder not submitted. Requested for adjournment, Adjourned for rejoinder and final hearing for 23.08.2017 before the D.B. at camp court Abbottabad.

Charman Camp Court, A/Abad

23.08.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney alongwith Sattar Muhammad, Tehsildar and Bahadar Khan, Assistant for the respondents present. Appellant seeks adjournment. Adjourned. To come up for rejoinder and final hearing before the D.B. on 23.11.2017 at camp court, Abbottabad.

Member

Chairman Camp court, A/Abad

23.11.2017

Clerk of counsel for the appellant and Mr. Muhammad Bilal, Deputy District Attorney alongwith Niaz Muhammad, Assistant for the respondents present. Counsel for the appellant is not in attendance. Requested for adjournment. To come up for arguments on 20.02.2018 before D.B at camp court, Abbottabad.

Member

Camp court, A/Abad

24.11.2015

Agent of counsel for the appellant, M/S Mukhtiar Ali, Supdt., Bahadar Khan, Assistant and Sattar Muhammad, Assistant alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 18.4.2016 at Camp Court Abbottabad as the appeal pertains to the territorial limits of Hazara Division.

<u>Ch</u>airman

18.04.2016

None present for the appellant. Mr. Bahadar Khan, Asstt. alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing on \$2.00.2016 before D.B at camp court, Abbottabad.

Chaaman Camp court, A/Abad

18.10.2016

Junior counsel for the appellant, M/S Mukhtiar Ali, Supdt, Sattar Muhammad Khan, Assistant and Bahadar Khan, Assistant for the respondents present. Learned senior counsel for the appellant has not turned up from Peshawar. Seeks adjournment. To come up for final hearing on 13.3.2017 before the D.B at camp court, Abbottabad.

Member

Chai**fm**an Camp Co**x**t, A/Abad





Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving was Patwari when dismissed from service on the ground of wilful absence from duty vide impugned order dated 13.05.2014. That the appellant preferred departmental against the said order dated 12.06.2014 which was not responded and hence the present service appeal on 25.09.2014.

That the enquiry was not conducted in the prescribed manners.

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 19.06.2015 before S.B.

Chairman

19.06.2015

Appellant in person and Mr. Sattar Muhammad, Assistant alongwith Assistant A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 3.9.2015.

Member

03.09.2015

Appellant in person, M/S Mukhtiar Ali, Supdt. and Sattar Muhammad, Assistant alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 24.11.2015 before S.B.

Chairman

Reader Note:

17.12.2014

No one is present on behalf of the appellant. Since the Tribunal is incomplete, therefore, case is adjourned to 09 02.2015 for the same.

Reader

09.02.2015

Counsel for the appellant present. Preliminary arguments partly heard. Since the matter required further clarification, therefore, pre-admission notice be issued to the AAG/GP to assist the Tribunal and to contact the respondents for submission of complete record of the appellant. To come up for preliminary hearing on 24.03.2015.

Member

Form- A FORM OF ORDER SHEET

Court of	 • •	
Case No	1186 /	2014

Case No	1186 /2014			
.No. Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate			
1 2	3			
1 25/09/2014	The appeal of Mr. Muhammad Bashir presented toda			
	by Mr. Noor Muhammad Khattak Advocate may be entered in			
	the Institution register and put up to the Worthy Chairman fo			
	preliminary hearing.			
	(alm)			
	REGISTRAR			
2 30-9-20	This case is entrusted to Primary Bench for preliminar			
	hearing to be put up there on			
	CHAIRMAN			
,				
·				

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1186 /2014

MOHAMMAD BASHIR

VS

SMBR

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal		1- 3.
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3.	Impugned order	В	5.
4	Departmental Appeal	С	6- 7.
5.	Wakalat Nama	***************************************	8.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK

ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 186 /2014

Mr. Muhammad Bashir S/O Tawus Khan, Village Obaid Kalli, Tehsil Tangi, District Charsadda

.....Appellant

VERSUS

- 1- The Senior Member Board of Revenue, Khyber Pakhtunkhwa Peshawar.
- 2- The Commissioner, Hazara Division, at Abbottabad.
- 3- The Deputy Commissioner Kohistan, District Kohistan. **Respondent**

APPEAL UNDER SECTION - 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 13-05-2014 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE WITHOUT CONDUTING REGULAR INQUIRY IN THE MATTER AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITH IN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

25/9/14

That on acceptance of this appeal the impugned order dated 13-05-2014 may very kindly be set aside and the respondents may kindly be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

- 2. That appellant while serving as patwari/Tehsil Accountant (BPS-05) in the respondent Department at Dassu an enmity was started between family of the appellant and his neighbors and due to that reason the appellant absented himself from duty.

GROUNDS:

- A. That the impugned order dated 13-05-2014 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on record, therefore not tenable and liable to be set aside.
- B. That the appellant has not been treated in accordance with law and rules on the subject noted above and as such the revenue Department violated Article 4 and 25 of the constitution of Pakistan 1973.
- C. That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 13.5.2014 against the appellant.
- D. That no show cause Notice has been served on the appellant before issuing the impugned order dated 13-05-2014.
- E. That no regular inquiry has been conducted in the matter before issuing the impugned order dated 13-05-2014 which is as per Supreme Court judgment is necessary in punitive action against the civil servant.
- F. That no chance of personal hearing /defense has been given to the appellant which is mandatory under the amended E&D Rules 2011.
- G. That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may very kindly be accepted as prayed for.

Dated: 22.9.2014

APPELLANT

MOHAMMAD BASHIR

THROUGH:

NOOR MUHAMMAD KHATTAK ADVOCATE OFFICE OF THE DISTRICT OFFICER, REVENUE & ESTATE/ COLLECTOR, KOHISTAN,

> /DOR&E Dated Dassu the 22/01/2010

OFFICE ORDER

On the recommendation of the Departmental Promotion/Selection Committee, in its meeting held on 21.01.2010, Mr. Bashir s/o Muhammad Taoos r/o Charsada Patwar candidate having passed Patwar Certificate Examination is hereby appointed as Naib Tehsii Accountant in BPS-5 against the existing vacancy in this office establishment, on the following terms and conditions with immediate effect in the interest of public service:-

Production of age and health certificate.

His services will be on probation for a period of two years. 2,

His services will be governed by such rules and regulations prescribed for civil servants of his cadre and as circulated by the Govt: from time to time. 3. In case any of his qualification documents found in correct /bogus at any

time, his services shall be liable to termination.

In case he wish to resign, one month notice will be necessary or in lieu 5.

thereof pay of one month will be forfeited to Government.

his pay will be started from the date of his arrival which should be within a week otherwise the appointment shall stand cancelled.

One his appointment he is posted at Tehsil Pallas.

District Officer. R&E/Collector Kohistan.

296-30/DOR&E(KH) Dated Dassu the 22/01/2010.

Copy forwarded for information and n/a to :-

1. The Secretary Board of Revenue NWFP, Peshawar.

2. The District Coordination Officer, Kohistan.

3. The District Accounts Officer, Kohistan.

4. The Tehsildar, Pallas.

5. The Assistant Accounts of this office.

6. The official concerned.

R&E/Collector Kohistan.

03005734372 ! Remisor

TESTEL

PAGE-

OFFICE OF THE DEPUTY COMMISSIONER, KOHISTAN No.5/Estt:/V.IV/4674-82/DCKH Dated Dassu, the 13/5/2014

OFFICE ORDER:

Whereas Mr. Mohammad Bashir Patwari/Naib Tehsil Accountant BPS-5, Tehsil Dassu absented himself from duty with effect from 01/06/2013 and an enquiry was initiated through AAG (G) Dassu. The enquiry Officer considered him to be guilty of willful absence and recommended for imposition of Major penalty under section 4 (6)(1) of the Khyber Pakhtunkhwa E&D Rules,2012. Again the enquiry was sent to the Finance Officer Kohistan who recommended the imposition of penalty under Section 4 of Khyber Pakhtunkhwa E&D Rules , 2011. After that the official appeared before the undersigned and verbally requested for relief inquiry and given a final chance to him to continue the service. But he again left the office and remained absent from duty without sanctioned of leave from the immediate officer/competent authority.

Due to prolong absence a notice under section 8 of Khyber Pakhtunkhwa E&D Rules, 2011 was sent to the official through post office on his home address dated 11/02/2014 but no reply was received from him, therefore another final notice was issued in the News papers Daily Mashriq Peshawar and Daily Subbeh Abbottabad on 15.03.2014 contacting him to attend the official duty within 15 days, but he did not attend the office so for.

Now being the competent authority after having considered the charges finding of the Enquiry Officer & keeping in view his prolong absence and he is liable for major penalty removal from service under section 4(b)(III) of rules Government Service with effect from 01.06.2013.

Deputy, Commissioner Kohistan at Dassu

ATTESTED

No and date even: Copy forwarded to the all concerned.

B-65

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ATTESTED

C-(6)

The Commissioner Hazara Division, At Abbottabad.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 13.05.2014
WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE

R/SHEWETH: ON FACTS:

- 1- That appellant was appointed as Patwari/ Tehsil Accountant (BPS-05) in the Revenue Department on the recommendation of proper Departmental selection committee vide order dated 22.1.2010. That after appointment the appellant submitted his charge report and medical certificate and started performing his duty quite efficiently and up to entire satisfaction of his superiors.
- 2- That appellant while serving as Patwari/ Tehsil Accountant (BPS-05) in the Revenue Department at Kohistan Dassuan enmity was started between family of the appellant and his neigbours and due to that reason the appellant submitted application for leave which was accepted and the appellant was awarded leave. That after expiry of the said leave the appellant submitted another application for extension of his leave but no reply was reveived from the concerned Department.
- 3- That in response the Deputy Commissioner without probe in to the matter straight away removed the appellant from service vide order dated 13.5.2014.
- 4- That having no other remedy the appellant preferred this Departmental appeal before your good self on the following grounds amongst the others.

GROUNDS:

- A- That the impugned order dated 13-05-2014 is against the law, facts, norms of natural justice and materials on record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That no regular inquiry has been conducted which is as per Supreme Count judgment is necessary in case of awarding major penalty.
 - D- That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 13-05-2014.
 - E- That no chance of personal hearing /defense has been given to the appellant which is mandatory under R.S.O. 2000 and E & D rules 1973.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 13-05-2014 may very kindly be set aside and the appellant may be re-instated with all back benefits. Any other remedy which your good self deems fit may also be awarded in favor of the appellant.

Dated: 12.6.2014

APPELLANT

Bashir, Patwari/Tehsil Accountant (BPS-05), o/o the Deputy Commissioner kohistan Dassu

ATTESTED

VAKALATNAMA

(APPELLANT) Mohammad Bashir (PLAINTIFF) (PETITIONER) VERSUS (RESPONDENT) (DEFENDANT) I/We Mohammad Bashir Do hereby appoint and constitute NOOR MOHAMMAD KHATTAK, Advocate, Peshawar to appear, plead, act compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost I/we authorize the said Advocate to deposit, withdraw and	IN THE COURT OF_	KPK	Service	Tribina	I Pesh
Mohammad Bashiv (PLAINTIFF) VERSUS (RESPONDENT) (DEFENDANT) I/We Mohammad Bashiv (DEFENDANT) I/We Mohammad Bashiv Do hereby appoint and constitute NOOR MOHAMMAD KHATTAK, Advocate, Peshawar to appear, plead, act compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost		••	*	OF	2014
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VERSUS (RESPONDENT) (DEFENDANT) I/We Mohammad Bashir Do hereby appoint and constitute NOOR MOHAMMAD KHATTAK, Advocate, Peshawar to appear, plead, act compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost	Mahamma	d Ba	r she's	(APPEL	•
(RESPONDENT) (DEFENDANT) I/We Mohammad Bashu' Do hereby appoint and constitute NOOR MOHAMMAD KHATTAK, Advocate, Peshawar to appear, plead, act compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost		illedo,		PETIT	,
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KHATTAK, Advocate, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost			·	•	•
receive on my/our behalf all sums and amounts payable of deposited on my/our account in the above noted matter. Dated/2014					

ACCEPTED NOOR MOHAMMAD KHATTAK (ADVOCATE)

OFFICE:

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar,

Peshawar City.

Phone: 091-2211391 Mobile No.0345-9383141