BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 976/2014

Date of Institution ... 24.07.2014

Date of Decision ... 14.12.2017

Fazal Hayat son of Jamshed R/O Sherdara, Parmoli District, Swabi. (Appellant)

VERSUS

1. The Registrar/Administrative Judge, Peshawar High Court, Peshawar and others. ... (Respondents)

MR. ASAD IQBAL AKHUNNZADA, Advocate ... For appellant

MR. MUIHAMMAD JAN, Deputy District Attorney ...For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 08.04.2014, against which he filed departmental appeal on 16.4.2014 which was not responded to and thereafter the present service appeal on 24.07.2014. The charge against the appellant was misconduct and inefficiency in performance of his duty.

ARGUMENTS.

3. The learned counsel for the appellant argued that the whole proceedings were void ab-initio as the proceedings were taken under the Government of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. That in the year, 2014 the said Ordinance had already been repealed. That the whole proceedings are therefore, void.

4. On the other hand the learned Deputy District Attorney argued that the proceedings were in fact taken under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. That the authority had the power to dispense with the regular enquiry. That final show cause notice was also issued. That different explanations of the appellant were also called for. That there was sufficient material to dispense with the enquiry.

CONCLUSION.

5. The very impugned order shows that the proceedings were undertaken under the law which was not in force at the time when the impugned order was passed. Not only this but the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 never applied to the employees of the District Courts. In Section 2(e) while defining the term "person in government service" the employees of the courts subordinate to the High Court have been excluded from the purview of this definition. Therefore, it cannot be believed that there was any clerical mistake in this order because the authority also added the words "as amended from time to time" in the impugned order. There is no order for dispensing with the regular enquiry within the meanings of Rule 5(i)(a) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. The learned Deputy District Attorney added that in the impugned order, the enquiry was dispensed with. It is strange to note that how the enquiry could be dispensed with in the order of removal.

6. As a sequel to the above discussion, this appeal is accepted and the authority is directed to hold denovo proceedings in accordance with law within a period of 90 days from the date of receipt of this judgment, failing which the appellant shall be reinstated in service. The issue of back benefits shall be subject to the final outcome of the denovo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
14.12.2017

23.10.2017 Counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. The learned Additional AG seeks adjournment. Granted. To come up for arguments on 14.12.2017 before the D.B.

Member Chairman

14.12.2017 Counsel for the appellant and Mr. Muhammad Jan, Dy. District Attorney for respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
MEMBER

CHAIRMAN

ANNOUNCED
14.12.2017

976/14

16.08.2017 Junior to counsel for the appellant and Mr. Kabeerullah Khattak, Asstt. A.G for the respondents present. Arguments on the point of jurisdiction heard. To come up for order tomorrow on 17.08.2017 before the Larger Bench.

Chairman

(M. Amin Kundi)
Member

(M. Hamid Mughal)
Member

(Ahmad Hassan)
Member

17.08.2017 Junior to counsel for the appellant and Mr. Kabeerullah Khattak, Asstt. A.G for the respondents present. Arguments on the point of jurisdiction heard and record perused.

Vide our detailed judgment of today, in connected service appeal No. 41/2016, entitled "Zubair Ahmad Vs. the Appellate Judge through Registrar, Peshawar High Court, Peshawar etc." this Tribunal has the jurisdiction to entertain the appeal. To come up for arguments before D.B on 23.10.2017.

Chairman

(M. Amin Kundi)
Member

(M. Hamid Mughal)
Member

(Ahmad Hassan)
Member

11.05.2017 Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Due to incomplete larger bench the case is adjourned. To come up for arguments on 16.08.2017 before Larger Bench.

(M.Amin Khan Kundi)
Member

(Gul Zeb Khan)
Member

(Ahmad Hassan)
Member

14.12.2016 Clerk to counsel for the appellant and Addl. AG for respondents present. Arguments could not be heard due to non-availability of learned Member Executive. Adjourned for final hearing before the larger bench on 10.01.2017.

(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN

(MUHAMMAD AAMIR NAZIR)
MEMBER

(ASHFAQUE TAJ)
MEMBER

10.01.2017 Appellant with counsel and Additional AG for the respondents present. Since learned counsel for appellants are not available today in similar cases, therefore, this appeal is also adjourned for final hearing to 11.05.2017 before the Larger Bench.

(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN

(MUHAMMAD AAMIR NAZIR)
MEMBER

(ASHFAQUE TAJ)
MEMBER

(AHMAD HASSAN)
MEMBER

11.04.2016 Counsel for the appellant and Mr. Muhammad Yasin, Assistant for respondent No. 1 alongwith Mr. Ziaullah, GP for all respondents present. Rejoinder not submitted. To come up for rejoinder and arguments on 8-8-16.

Member Member

08.08.2016 Counsel for the appellant and Mr. Ziaullah, GP for respondents present. During the course of arguments, learned GP stated that per recent decision of the august Supreme Court of Pakistan reported in 2016 SCMR 1206, the Service Tribunal has no jurisdiction to entertain appeal of the Employees of the District Judiciary. Hence it would be appropriate to put up this case alongwith other appeals on the same point to the Worthy Chairman for further orders.

Member Member

29.09.2016 Appellant with counsel and Addl. AG alongwith Muhammad Yasin Asstt. for the respondents present. Seeks adjournment. Adjourned for final hearing before the larger bench on 14.12.2016.

(Muhammad Azim Khan Afridi)
Chairman

(Pir Bakhsh Shah)
Member

(Muhammad Aamir Nazir)
Member

(Abdul Latif)
Member

18.05.2015 Appellant with counsel, M/S Arshed Iqbal, Junior Clerk for respondent No. 1, Gohar Sajjad, Supdt. for respondent No. 2 and Liaq Khan, C.O.C for respondent No. 3 alongwith Addl: A.G for respondents present. Rejoinder submitted, copy whereof supplied to the learned Addl: A.G. The case was initially fixed for arguments on 20.11.2015, but on the request of the learned counsel for the appellant case is fixed for arguments on 8.9.2015 instead of 20.11.2015. Notice be issued to the respondents.

Member

08.09.2015 Appellant with counsel (Malik Muhammad Ajmal Khan, Advocate) present and fresh Wakalatnama placed on file. Mr. Muhammad Adeel But, AAG with Samiullah, Judicial Assistant for respondent No. 1 and Mr. Laiq Khan, Clerk of court for respondents No. 2 & 3 present. Written reply of respondents No. 2& 3 already submitted. On the request of learned AAG, last chance is given to respondent No. 1. Therefore, case to come up for written reply of respondent No. 1 on 21-10-2015

Member Member

21.10.2015 Appellant with counsel, M/S Samiullah, Judicial Assistant for respondent No. 1 and Phool Badshah, Junior Clerk for respondents No. 2 and 3 alongwith Mr. Muhammad Jan, GP for respondents present. Comments on behalf of respondent No. 1 submitted, copy whereof supplied to learned counsel for the appellant while Respondents No. 2 and 3 have already submitted their written reply. To come up for rejoinder and arguments on 11-4-16.

MEMBER MEMBER

27.1.2015 Counsel for the appellant, and Mr. Ziaullah, GP with Gohar Sajjad, Supdt. and Laiq Khan, COC for the respondents present and requested for time to file written reply. To come up for written reply of the respondents on 4.3.2015.

MEMBER

4.3.2015 Counsel for the appellant and Sr.GP with Laiq Khan, COC for the respondents present and submitted an application for adjournment, which is placed on file. To come up for written reply on 6.4.2015.

MEMBER

06.4.2015 Counsel or the appellant and Mr. Muhammad Jan, GP with Gohar Sajjad, Supdt. and Laiq Khan, Junior Clerk for the respondents present and reply filed. To come up for rejoinder on 18.5.2015.

MEMBER MEMBER

Appeal No. 976/2014
Mr. Faisal Hayat

3. 18.08.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 08.04.2014 vide which the appellant was removed from service. Against the impugned order the appellant filed departmental appeal on 16.04.2014 which was not respondent within the statutory period of 90 days, hence the present appeal on 24.07.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 10.11.2014.

Member

Appellant deposited Process fee & Security Rs. 300/= Bank receipt attached with file.

4. 18.08.2014

This case be put before the Final Bench II for further proceedings.

Chairman

10.11.2014

Appellant with counsel and representative of the respondents present. The Tribunal is incomplete. To come up for the same on 17.12.2014.

READER

19.12.2014

Petitioner in person and Mr. Muhammad Adeel Butt, AAG with Gohar Sajjad, Supdt. and Liaq Khan, for the respondents present. The Tribunal is incomplete. To come up for the same on 27.01.2015.

READER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 976/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/07/2014	The appeal of Mr. Fazal Hayat presented today by Mr. Akhunzada Asad Iqbal Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	24-7-2014	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 18-8-2014. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 976 /2014

Fazal Hayat .....Appellant

VERSUS

The Registrar/ Administrator Judge,

Peshawar High Court, Peshawar and others.....Respondents

INDEX

Appellant

Through

Akhunzada Asad Iqbal
Advocate, Peshawar
Cell: 0345-9499710

Dated:
24/7/014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 976 /2014

[redacted] 24/7/2014

Fazal Hayat S/o Jamshaid

R/o Sherdara, Parmoli District Swabi..... .....Appellant

VERSUS

1. The Registrar/ Administrator Judge, Peshawar High Court, Peshawar

2. District & Session Judge, Swabi

3. Senior Civil Judge, Swabi.....Respondents

SERVICE APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974. AGAINST DEPARTMENTAL APPEAL/ REPRESENTATION AGAINST THE ORDER DATED 08.04.2014 OF THE DISTRICT & SESSION JUDGE, SWABI

[redacted] 24/7/14

Respectfully Sheweth:-

Appellant humbly submits as under

1) That the appellant was initially appointed as Sweeper (BPS-02) by Senior Civil Judge, Swabi on temporary basis

upon recommendation of Departmental Selection Committee (DSC) on 29.01.2008. (Copy of office order dated 29.01.2008 is attached as Annexure "A")

2) That on completion of one year probation period the appellant's service was regularized and was performing his duties with full diligence, heard work and with honesty.

3) That on 24.11.2010 through office order No.714-737 the Hon'ble Senior Civil Judge, Swabi assigned duties to the appellant alongwith other judicial staff and Zone (B) was allocated to him which included Hon'ble Additional Sessions Judge-I to IV Offices, wash rooms, stairs and garden including the Court Rooms. (Copy of office order dated 24.11.2010 is attached as Annexure "B")

4) That the appellant was performing his duty whole heartedly and was present on each and every date during office timing. His attendance was regularly registered in the Daily Attendance Register. (Copy of attendance register is attached as Annexure "C")

5) That on 19.08.2013 the Hon'ble District & Sessions Judge, Swabi issued an explanation letter to appellant vide its Office Order No.5517/D&SJ in which it was mentioned that you are frequently absent from your duty. The appellant submitted his reply within the prescribed time on 22.08.2013. The District & Sessions Judge issued a

warring letter No.5636/D&SJ dated 11.09.2013, which is re-produced below

> ***"Reference your explanation in response to letter bearing Endst; No.5517 dated 19.08.2013, the same is not satisfactory. You are hereby warned to be careful in future"***

(Cop of letters are attached as Annexure "D" to "D/2)

6) That on 24.08.2013, once again an explanation was called from the appellant through letter No.5543/D&SJ by the Hon'ble District & Sessions Judge, Swabi in which the reason was shown that you were absent from duty. The appellant submitted his written reply before the Hon'ble District & Sessions Judge, Swabi. (Copy of the letter and reply are attached as Annexure "E" & "E/1")

7) That on 23.01.2013 a report was submitted by Riaz Ahmad Reader/ Assistant to Additional Sessions Judge-III, Swabi in which it was alleged that the appellant was absent from his duty for the last three (03) days due to which cleanness position of the premises is not done. In pursuance of the said report of reader of the Court of Additional District & Sessions Judge-III, Swabi an explanation letter No.5911/D&SJ dated 23.10.2013 was issued to the appellant. The appellant submitted written reply to the said explanation on 28.10.2013 consequent upon this a warning letter No.5927/D&SJ dated 9.10.2013

was issued to the appellant. (Copy of report, letter and reply are attached as Annexure "F" to "F/2")

8) That it is pertinent to mentioned on the same day dated 23.10.2013, that the reader of the Hon'ble Additional District & Sessions Judge-II, Swabi submitted a report regarding appellant in which he stated that he was present. It is worth mentioning that the report of the said reader regarding appellant's presence and his dutifulness was not consider in his favour. (Copy of report is attached as Annexure "G")

9) That on 05.12.2013 Rader of the Additional District & Sessions Judge-III, Swabi submitted report against appellant on his absence. Consequent upon the report of the reader of the same court explanation was called to which the appellant submitted written reply. (Copy of report dated 05.12.2013 is Annexure "H")

10) That on 25.02.2014, once again an explanation was called upon from the appellant by Additional District & Sessions Judge vide letter No.367/D&SJ to which the appellant submitted written reply on 10.03.2014. (Copy of explanation is Annexure "I")

11) That on 31.03.2014 vide letter No.654/D&SJ issued a Final Show Cause notice to the appellant and a written reply was submitted by the appellant on 01.04.2014. (Copy of letter and reply are attached as Annexure "J" & "K")

12) That on 08.04.2014 an office order was issued I which immediate effect under Section-3 clause (a) & (b) of the NWFP Removal from Service (Special Powers) Ordinance, 2000, for the removal of the appellant.

13) That the appellant being aggrieved from the order dated 08.04.2014 passed by the learned District & Sessions Judge, Swabi preferred Departmental representation/ Appeal before the respondent No.1, but despite lapse of 90 days, the representation/ departmental appeal of the appellant has not been decided as yet, (Appeal is attached as Annexure "L") hence, the instant appeal on the following grounds, inter alia:-

GROUNDS.

A. That removal order 08.04.2014 of the appellant passed by respondent No.2 is against law, because no inquiry was initiated against the appellant nor the Senior Civil Judge was informed about this order as the appellant comes in the domain of Senior Civil Judge establishment.

B. That the basic requirements of issuing charge sheet and statement of allegations are not been fulfilled, resultantly amounts to malafide removal of the appellant.

C. That propriety, fair pay and justice demands that appellant's removal order may kindly be set aside and also his salary may graciously be released.

D. That the appellant has been removed from his service under wrong law.

It is therefore, humbly prayed that on acceptance of this appeal, the impugned order dated 08.04.2014 may kindly be set aside and the respondents may kindly be directed to re-instate the appellant in his service and his salary may also be released.

Dated: 24/7/014

Appellant

Through

Akhunzada Asad Iqbal

&

Arbab Saiful Kamal
Advocates, Peshawar

AFFIDAVIT

I, Fazal Hayat S/o Jamshaid R/o Sherdara, Parmoli District Swabi (Appellant), do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this Hon'ble Tribunal.

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No._____/2014

Fazal Hayat ....Appellant

VERSUS

The Registrar/ Administrator Judge,

Peshawar High Court, Peshawar and others.....Respondents

Application for suspension of operation of the impugned order dated 08.04.2014 passed by respondent No.2, vide which the appellant was removed from service, till the final decision of titled Appeal.

Respectfully Sheweth:

1) That titled Service Appeal is being filed before this Hon'ble Tribunal alongwith accompanying application for say.

2) That grounds of main appeal may kindly be read as integral part and parcel of this application.

3) That balance of convenience also lies in favour of appellant.

4) That appellant is having a good prima-face case in his favour and is sanguine about its success.

5) That if the operation of the impugned order dated 08.04.2014 is not suspended till the final decision of the titled appeal, the

very purpose of this appeal will be lost and the appellant will also suffer irreparable loss.

It is, therefore, prayed that on acceptance of this application, the operation of the impugned order dated 08.04.2014 may kindly be suspended and appellant be allowed to continue his service and his salary may kindly also be released till the final decision of titled Appeal.

Appellant

Through

Akhunzada Asad Iqbal

&

Arbab Saiful Kamal
Advocates, Peshawar

AFFIDAVIT

I, Fazal Hayat S/o Jamshaid R/o Sherdara, Parmoli District Swabi (Appellant), do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this Hon'ble Tribunal.

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

Deponent

Deponent

(9)

ANNEXURE "A"

OFFICE OF SENIOR CIVIL JUDGE, SWABI

Office Order:
29.01.2008

Consequent upon the recommendation of Departmental Selection Committee (DSC) vide its meeting held on 29.01.2008 in the office of undersigned, the following officials are hereby appointed on temporary basis subject to medical fitness: -

S. No.	Name of Candidate	Appointed As
1.	**Mr. Sarwar Said,** S/o Said Abad, R/o Maneri Bala, Swabi	**Process Server (BPS-02)**
2.	**Mr. Fazal Malik,** S/o Umara Khan, R/o Panj Pir, Swabi	**Process Server (BPS-02)**
3.	**Mr. Shahid Ali,** S/o Muhammad Umar, R/o Adina, Swabi	**Process Server (BPS-02)**
4.	**Mohammad Saqib,** S/o Lal Johar, R/o Shera Ghund, Swabi	**Chowkidar (BPS-02)**
5.	**Mohammad Amin,** S/o Mohammad Jamil, R/o Kernal Sher Killi, Swabi	**Naib Qasid (BPS-02)**
6.	**Mr. Anwar Ali,** S/o Habib Ullah, S/o Gar Munara, Swabi	**Naib Qasid (BPS-02)**
7.	**Mr. Fazal Hayat,** S/o Jamshed Khan, R/o Sher Dara, Swabi	**Sweeper (BPS-02)**
8.	**Mr. Eid-ur-Rehman,** S/o Fazal-ur-Rehman R/o Topi, Swabi	**Sweeper (BPS-02)**
9.	**Mr. Asif Khan,** S/o Hasan Ullah, R/o Maneri Bala, Swabi	**Sweeper (BPS-02)**

All the appointments shall be subject to the following terms and conditions: -

1. All the rules for the time being enforced shall be applicable.
2. The appointments shall be subject to medical fitness and antecedent verification of the appointees.
3. All the appointees shall be on probation for a period of one year [illegible] by rules.

Attested by
24/7/04

ESHAWAR

4. The appointees shall be required to report for duty within **07 days**, failing which the appointment order shall be deemed to have extinguished/cancelled.

(LIAQAT ALI)
Senior Civil Judge, Swabi

No. 131 Dated Swabi the, 04.2. /2008

Copy forwarded for information to: -

1. The Worthy Registrar, Peshawar High Court, Peshawar
2. The Hon'ble District & Sessions Judge, Swabi
3. Muhammad Asif Khan ASJ/Addl; MIT Peshawar High Court, Peshawar (Nominee of Hon'ble Peshawar High Court, Peshawar)
4. Mr. Aman Ullah Khan, CJ/JM, Swabi (Member/Nominee of Chairman)
5. Medical Superintendent, D.H.Q Hospital, Swabi
6. District Accounts Officer, Swabi
7. Officials concerned by name
8. Office Record

(LIAQAT ALI)
Senior Civil Judge, Swabi

Attested
24/2/08

ANNEXURE "B"

(21)

OFFICE ORDER:

To ensure a clean and hygienic environment in the Judicial Complex, the duties assigned and areas allocated to sweepers hitherto, are needed to be reworked. With this objective and in supersession of all previous orders in this regard, the duties given and zones allocated to the sweepers of this establishment as well as of the District & Sessions Judge (with patent approval) are modified, for strict compliance, as under:

وقاص مسیح: (Zone L) جوڈیشل لاک اپ، محافظ خانہ، نقول دفاتر اور رابطہ سڑک نقول برانچ و محافظ خانہ

یونس مسیح: (Zone R) تمام سڑکیں عدالت ہائے و جوڈیشل کالونی (علاوہ رابطہ سڑک نقول برانچ و محافظ خانہ)

پرویز مسیح: (Zone H) سیشن ہاؤس

جاسر مسیح: (Zone A) عدالت جناب ڈسٹرکٹ اینڈ سیشن جج بمعہ متعلقہ دفاتر، دفاتر سپرنٹنڈنٹ و ناظر، برآمدہ جات، چمن

فضل حیات: (Zone B) عدالت ہائے ایڈیشنل سیشن جج 1 تا 4 و متعلقہ دفاتر، واش رومز، سیڑھیاں اور چمن

عبدالرحمان: (Zone C) عدالت ہائے سینئر سول جج، سول جج-V متعلقہ دفاتر، واش رومز، سیڑھیاں اور چمن

نعیم اکبر: (Zone D) عدالت ہائے سول جج-I اور سول جج-II، سپیشل کورٹ اور متصلہ خالی عدالت بمع دفاتر، واش رومز، چمن اور سیڑھیاں

آصف خان: (Zone E) عدالت ہائے سول جج-III، فیملی کورٹ، جوڈیشل مجسٹریٹ-I اور متصلہ خالی عدالت بمع دفاتر، واش رومز، چمن اور سیڑھیاں

اعجاز علی: (Zone F) عدالت ہائے جوڈیشل مجسٹریٹ-II، سول جج-IV، اور بالائی دو عدد خالی عدالتیں بمع دفاتر، واش رومز، تین عدد چمن اور سیڑھیاں

طاہر رحمٰن: (Tehsil Lahor) تمام عدالت و دفاتر ہائے تحصیل لاہور

It is made clear on the above mentioned officials that their performance shall be regularly gauged, during surprise visits of the entire Complex, in terms of the status of cleanliness in the areas as allocated here-above. If found unsatisfactory, this order may be viewed as a step towards initiating departmental proceedings, under the relevant rules, against the delinquent officials.

(Copy of sketch of Judicial Complex showing the assigned zone-wise duties and detail of duties in Urdu version, are also furnished along with, for convenience.)

(INAMULLAH WAZIR)
Senior Civil Judge, Swabi

OFFICE OF THE SENIOR CIVIL JUDGE, SWABI

No. 714—737 /SCJ Dated Swabi, the 24-11-/2010

Copy communicated for information to:

1. The District & Sessions Judge, Swabi
2. All the Judicial Officers and with the request to keep check on duties of the officials relevant to their respective court rooms etc.
3. Officials concerned
4. Office record

Senior Civil Judge, Swabi

Attested
24/7/2014

Seen. Office to ensure proper implementation of instant order.

ANNEXURE "C"

(12)

Register of the ... for the Month of ... 2013

DATE AND HOURS OF ATTENDANCE

Serial No.	Name	Rank	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total No. of Days	Remarks
1	[illegible]	[illegible]	Arm	1	st	21-3-13					Summer Vacation													Re	Re	Re	X	Re	Re	Re	Re	Re	Re		
2	[illegible]	KPO																									X								
3	[illegible]	[illegible]																						J	J	J	X	J	J	J	J	J	J		
4	[illegible]	[illegible]																									X								
5	[illegible]	N.O																						2	2	2	X	2	2	2	2	2	2		
6	[illegible]	[illegible]																									X								
																								P	P	P	X	P	P	P	P	P	P		
																											X								
																								P	P	P	X	P	P	P	P	P	P		
																								P	P	P	X	P	P	P	P	P	P		

Total	Leave	Attend	Rank	Name
5	—	5	[illegible]	[illegible]
4	—	4	KPO	[illegible]
4	—	4	[illegible]	[illegible]
3	—	3	[illegible]	[illegible]
6	—	6	N.O	[illegible]
3	—	3	[illegible]	[illegible]

Attendance Register of the _____ for the Month of _____ 2013

DATE AND HOURS OF ATTENDANCE

	Name	Rank	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total No. of Days	Remarks
1	Nouser Khan	Reader		P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	L	P	P	P	P			
2	Izhar Ali	C.O		J	J	J	J	J	J	X	J	J	J	J	J	J	X	J	J	J	J	J	J	X	J	J	J	J	J	J	J	J			
3	Shamsul Islam	Steno		S	S	S	S	S	S	X	S	S	S	S	S	S	X	S	S	S	S	S	S	X	S	S	S	S	S	S	S	S			
4	Asghar Ali	J/C		P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	P	P	P	P	P			
5	Dir Jamal	N/Qasid		P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	P	L	L	P	P			
6	Fazal Hayat	-		P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	P	P	P	X	P	P	P	P	L	P	P	P			

ٹوٹل			
	حاضر	غائب	
6	1	5	نوشیروان دنیر
4	-	4	اظہار محمد KP
4	-	4	شمس الاسلام سٹینو
3	-	3	اصغر علی جے
8	2	6	سید قاسم NQ
4	1	3	صلاح الدین کاکڑ

13

Attendance Register of the _____ for the Month of _____ 2013

DATE AND HOURS OF ATTENDANCE

	Name	Rank	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total No. of Days	Remarks
1	[illegible]	[illegible]	A	A	X	A	A	X	A	A	X	X	A	A	A	X	X	A	X	A	A	A	A	A	A	X	A	A	A	A	A	A			
2	[illegible]	KPO	J	J	X	J	J	X	J	J	X	X	J	J	J	X	X	J	X	J	J	J	J	J	J	X	J	J	J	J	J	J			
3	[illegible]	[illegible]	-	-	X	-	-	X	-	-	X	X	-	-	-	X	X	-	X	-	-	-	-	S	S	X	S	S	S	S	S	S			
4	[illegible]	[illegible]	P	P	X	P	P	X	P	P	X	X	P	P		X	X		X	P	P	P	P	P	P	X	P	P	P	P	P	P			
5	[illegible]	[illegible]	P	P	X	P	P	X	P	P	X	X	P	P		X	X		X	P	P	P	P	P	L	X	P	P	P	P	P	P			
6	[illegible]	[illegible]	P	P	X	P	P	X	P	P	X	X	P	P	P	X	X	P	X	P	P	P	P	P	P	X	P	P	P	P	P	P			

(14)

5/10/2013

(15)

Daily Attendance Register of the [illegible]

DATE AND HOURS

Serial No.	Name	Rank	1	2	3	4	5	6	7	8	9	10	11	12
1)	Riaz Ahmad	Reader	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		
2)	Muhammad Iqbal	Steno	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		
3)	Izhar Ali	KPO	[illegible]					[illegible]						
4)	Arghar Ali	O/C	[illegible]					[illegible]						
5)	Pir Jamal.	HIO	P	P	P	P	P	[illegible]						
6)	Fazal Hayat.	Sweeper	P	P	P	P	C/L	[illegible]	P	P				

Attested
[illegible]
[illegible]

No. 5517 /D&SJ Dated Swabi the 19 / 08 / 2013

ANNEXURE "D"

16

From:

District & Sessions Judge,
Swabi

To:

Fazal Hayat,
Sweeper

Subject: **EXPLANATION.**

Memo,

It has been noticed by the undersigned with great concern that you are not performing your duties diligently and have been frequently found absent, as a result the entire area falling within your work area/block was found extremely dirty and dusty and littering with waste.

In this respect you were also called by the undersigned and were made to realize the nature of your duty and the negligence committed by you and were also advised to be careful in future. Despite counseling and warnings, you were absent today. You were also contacted early in the morning by the office of the undersigned, but you did not pay heed or reach this office till closing hours. You also did not bother to even inform or make an application about your possible absence.

In view of the above, you are hereby called to show cause as to why disciplinary action should not be taken against you under the E&D Rules 2011.

Your reply/explanation must reach this office within 03 days positively.

AYMON ZIA,
District & Session Judge,
Swabi

Attested by
24/7/014

Explanation is not satisfactory
Be warned
11/9/13

ATTESTED

D:\0 My Documents\KPO to DSJ\Office files\40\Explanation Fazal Hayat Sweeper 18-08-2013.doc

(17)

ANNEXURE "D1"

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (فیمیل) ایبٹ آباد

بجواب درخواست جناب ارشد جواب طلبی مورخہ 5517 بتاریخ 19/8/2013

جناب عالی!

گزارش عرض ہے۔ یہ کہ سائل مقدمہ بقائمی سے اپنے بلاک کی صفائی ہر روز کرتا ہے۔ اور سائل اپنے بلاک کو ہر ہفتے کو پانی سے دھوتا ہے۔ اور مذکورہ مدعی نے سائل کے خلاف کسی قسم کی شکایات نہیں کی ہے اور سائل بخوبی اپنی ڈیوٹی سرانجام دے رہا ہے۔

لہٰذا آپ صاحبان سے گزارش ہے کہ سائل کو معاف فرمایا جائے۔ سائل دعا گو رہے گا۔

عرضیہ

22/8/13

ATTESTED

رضا

ضیاء خاکروب ملازمت ڈی ایچ کیو ایبٹ آباد

سائل

24/7/2014

(18) ANNEXURE "D-2"

No. 5636 /D&SJ (F-40) Dated Swabi the 11 /09/2013

From:

District & Sessions Judge,
Swabi

To:

Fazal Hayat
Sweeper
Sessions Courts, Swabi

Subject: **WARNING**

Memo,

Reference your explanation in response to letter bearing endst ; No. 5517 dated 19-08-2013, the same is not satisfactory. You are hereby warned to be careful in future.

(AYMON ZIA)
District & Session Judge,
Swabi

Attested by
11/9/014

ATTESTED

ANNEXURE "E"

(19)

No. 5543 /D&SJ

Dated Swabi the 24 / 08 / 2013

From:

District & Sessions Judge,
Swabi

To:

Fazal Hayat,
Sweeper

Subject: **EXPLANATION.**

Memo,

It has been noticed by the undersigned with great concern that today i.e. 24-08-2013 you were absent from your duty without prior information/application despite earlier directions by the undersigned. On query from the Court officials it was reported that you remained absent without application, while office of the superintendent also contacted your cell number but found off. Moreover, during visit of the undersigned it was found that the area remains dirty despite clear directions by the undersigned to you. A show cause notice has earlier been served upon you with similar allegations but you have not submitted your report in defiance of the orders.

In view of the above, you are hereby once again called to show cause as to why disciplinary action should not be taken against you under the E&D Rules 2011.

Your reply/explanation must reach this office within 03 days positively.

AYMON ZIA,
District & Session Judge,
Swabi

Attested
24/7/2014

ATTESTED
25/8/13

ANNEXURE "E1"

(20)

[illegible]

جواب طلبی بابت Explanation مورخہ 26/8/2013

جناب عالی

[illegible] مورخہ 26/8/2013 کے جواب میں
[illegible]

یہ کہ سائل مضمون [illegible] کا رہنے والا ہے۔ اور سروس [illegible]
[illegible] کے ساتھ ہی وابستہ ہے۔

یہ کہ [illegible] بارشوں اور سیلابوں کی وجہ سے
[illegible] میں سیلاب پانی کی وجہ راستہ منقطع تھا
یہ کہ سائل [illegible] صحیح کرنے کے لئے [illegible] تھا

لہٰذا استدعا ہے کہ [illegible]

[illegible]

ATTESTED
[illegible] 9/4/14
Examiner [illegible] Sahibi

Attested by
24/7/014

(21) ANNEXURE "F"

رپورٹ بابت سوپرنٹنڈنٹ جیل جات حسب ذیل عرض ہے۔

جناب عالی!

عدالت ہذا میں دو تین دن سے حوالاتی نمبر [illegible]
ہے اور نہ ہی متعلقہ سوپرنٹنڈنٹ پیش آیا ہے اور کچھ
آیا ہے لیکن ابھی تک حوالاتی نہیں آیا ہے۔

رپورٹ عرض ہے۔

[illegible]

[illegible] احمد
ریڈر / اسسٹنٹ
عدالت [illegible] راولپنڈی۔
23/10/13

Submitted
Call his explanation
23/10/13

Attested by
24/7/014

ATTESTED
24/7/14
Examiner Civil Court Dept:
Sessions Court Rawalpindi

(22) ANNEXURE "F1"

No 5911 /D&SJ (F-40) Swabi the Dated 23.10.2013

From:

District & Sessions Judge,
Swabi

To,

Fazal Hayat
Sweeper

Subject: **EXPLANATION**

As per report of Reader of the court of Addl: District & Sessions Judge - III, Swabi, you are absent for the last 03 days due to which cleanliness position of the premises is unsatisfactory.

You are, therefore, directed to explain your position as to why disciplinary action should not be taken against you under the E & D rules 2011.

Your reply should reach to this office within 03 day positively.

Certified to be true copy
8/4/14

AYMON ZIA
District & Sessions Judge,
Swabi

No. of Application 3086
Date of Presentation of Application 8-4-14
Date of Advance Deposit
Date on which copy prepared 8-4-14
Date on which copy examined 8-4-14
Fee on words 40.00
Court Fee
Urgent Court Fee
Signature of Copyist 8/4/14

ATTESTED
8/4/14
Deputy
Sessions Judge Swabi

Attested by
24/7/24

(93)

ANNEXURE "F2"

بحضور جناب ڈسٹرکٹ اینڈ سیشن جج صاحب بھوربھی۔

جناب عالی!

بحوالہ چٹھی انکوائری نمبر (F-14) ASJ-III/DESTT 591 مورخہ 23-10-2013 از دفتر جناب ڈسٹرکٹ اینڈ سیشن جج صاحب بھوربھی، معروضانہ گزارش ہے کہ سائل عدالت جناب اینڈیشنل ڈسٹرکٹ اینڈ سیشن-III صاحب کی بحالی مستقل طور پر کرتا ہے اور سائل کبھی بھی اپنی ڈیوٹی سے غیر حاضر نہیں رہا ہے جبکہ سائل اپنی ڈیوٹی ایمانداری اور فرض شناسی سے سرانجام دیتا ہے۔ رپورٹ رپیڈر ASJ-III غلط بے بنیاد اور حقائق کے منافی ہے۔ سائل نے مورخہ 23-10-2013 کو بھی عدالت جناب ASJ-III صاحب بھوربھی کی بحالی کی تھی۔

اسلئے آپ صاحبان سے گزارش ہے کہ سائل Explanation منسوخ فرمایا جاوے اور سائل آئندہ آپ صاحبان کو شکایت کا موقع نہیں دے گا اور محتاط رہے گا۔

العارض!

مورخہ: 28-10-2013

آپ تابعدار مغل حیات سویپر/خاکروب سیشن ڈویژن بھوربھی۔

شہر حیات

Attested by
24/7/2014

Sajid
Asma Tariq
Waqar Ahmed

ATTESTED
28/
Examiner
Sessions Bhurban

(24)

No 5927 /D&SJ Dated Swabi the 29/10 /2013
(F40)

F-40

From:

District & Sessions Judge,
Swabi

To:

Fazal Hayat
Sweeper

Subject: **WARNING**

Memo,

With reference to your explanation in response to this office letter bearing endst No. 5911 (F-40) dated 23-10-2013, your reply was not found satisfactory. Therefore, last warning is hereby issued to you to be careful in future & improve your performance.

(AYMON ZIA)
District & Session Judge,
Swabi

Noted Sir.

Attested by
24/7/014

ATTESTED
Examiner Judicial Department
Sessions Court Swabi

D:\@ My Document\KPO to DSJ\Office files\40\Fazal Hayat Sweeper.doc

(25)

ANNEXURE "G"

رپورٹ بابت سویپر نسل میاں حسب ذیل عرض ہے۔

جناب عالی

مؤدبانہ گزارش ہے۔ کہ متعلقہ سویپر نے مورخہ 10/13 کو صفائی کی تھی اور آج مورخہ ابھی بھی صفائی کر رہا ہے اور آج عدالت ہذا میں حاضر ہے۔ رپورٹ عرض ہے۔

خالد محمود ریڈر عدالت جناب ASJ صاحب II سوابی

23-10-13

Submitted

call his explanation

23/x/13

Attested

29/2/014

ATTESTED

Examiner Judicial Department
Sessions Court Swabi

(26) Attested Annexure "A" Annexure "G" "H"

The Additional District & Sessions Judge-III,
Swabi

Subject: **REPORT AGAINST FAZAL HAYAT SWEEPER**

Sir,

I have the honour to submit that Fazal Hayat Sweeper attached with this court is usually found absent and on several requests often visit once a week he was time and again warned but no positive response.

Report submitted, please

Reader to
ASJ-III, Swabi

No. 694 / Dated Swabi the 05-12-/2013

Forwarded to the Hon' able District & Sessions Judge, Swabi for information and necessary action.

explanation be called
Show cause notice be issued
6/12

Tahir Mehmood Khan,
AD&SJ-III, Swabi

Attested
29/7/014

ATTESTED
9/4/14
Examiner Copying Deptt:
Sessions Court Swabi

(26) Attested Annexure "A" Annexure "G" "H"

The Additional District & Sessions Judge-III,
Swabi

Subject: **REPORT AGAINST FAZAL HAYAT SWEEPER**

Sir,

I have the honour to submit that Fazal Hayat Sweeper attached with this court is usually found absent and on several requests often visit once a week he was time and again warned but no positive response.

Report submitted, please

Reader to
ASJ-III, Swabi

No. 694 / Dated Swabi the 05-12-/2013

Forwarded to the Hon'able District & Sessions Judge, Swabi for information and necessary action.

explanation be called
~~Show cause~~
notice be issued
6/12

Tahir Mehmood Khan,
AD&SJ-III, Swabi

Attested by
24/7/014

ATTESTED
9/4/14
Examiner Copying Deptt:
Sessions Court Swabi

(27)

No 6747(F-40) D&SJ

Swabi the Dated 05.12.2013

From:

District & Sessions Judge,
Swabi

To,

Fazal Hayat
Sweeper

Subject: EXPLANATION

Memo,

As per report of Reader attached to the court of learned Addl. District & Sessions Judge - III, Swabi, you are usually found absent and on several request often visit the learned court once in a week..

Therefore, you are directed to explain your position. Your reply should reach to this office immediately.

AYMON ZIA
District & Sessions Judge,
Swabi

Fazal Hayat

Attested by
24/7/014

ATTESTED
Examiner Copying Branch
Sessions Court Swabi

D:\M. My Document\KPO to DSJ\Office files\460Explanation from Sweepers 05.12.2013.doc

بخدمت جناب سیشن جج صاحب سوابی

جواب طلبی

جناب عالی!

Be warned again. 10/12

سائل عرض گزار ہے کہ سائل نے مورخہ 12-9-2012 کو
جواب طلبی کی تھی لیکن بابت صفائی نہ کرنے۔

1۔ یہ کہ سائل روزانہ کی بنیاد پر صفائی معمول کرتا ہے

2۔ یہ کہ سائل آئندہ پہلے اپنا کام معمول کے مطابق
کرے گا۔

3۔ نیز کہ سائل آئندہ ماحول کا خیال رکھے گا۔

لہٰذا گزارش کرتا ہوں کہ سائل
کو معاف فرمائی۔

ATTESTED
Examiner
Sessions Court Swabi

سائل

Attested
24/10/2012

مورخہ 7-12-2012

(29) ANNEXURE "A" 9

No. 367 /D&SJ (F40) Dated Swabi the 25 /02/2014

From:

District & Sessions Judge,
Swabi

To:

Fazal Hayat
Sweeper
Sessions Courts, Swabi

F40

Subject: EXPLANATION

Memo,

During visit of the Judicial Complex Shamansoor Swabi today on 24.02.2014, cleanliness of the area allocated to you was found littered with rubbish. In the past too you were called upon to explain this kind of negligence and were warned to be careful but it appears that you are deliberately not attending to your duties. You have time and again repeated this kind of behavior which shows that you have completely lost interest in your work and are thus no more fit to be retained in service. The record of this office is a proof of the above facts.

You are once again directed to explain your such negligence within 05 days of the receipt of this letter.

25/2/14

(AYMON ZIA)
District & Session Judge,
Swabi

Attested by
24/7/014

ATTESTED
24/4/14
Examiner Judicial Department
Sessions Court Swabi

D:\0. My Document\KPO to DSJ\Office files\d0\Explanation.doc

بخدمت جناب ڈسٹرکٹ اینڈ سیشن جج صاحب ضلع سوات

عنوان: جواب طلبی

جناب عالی!

مورخہ 3/14 کو درخواست گزار کی جانب سے مسائل سے متعلق جواب طلبی کی گئی تھی۔

یہ کہ من مسائل ایک غریب گھرانے سے تعلق رکھتا ہے اور مسائل باقاعدہ روزانہ مزدوری کیلئے آتا ہے اور پھر واپس چلا جاتا ہے۔

یہ کہ آپ صاحبان نے عدالتوں کا معائنہ کیا تھا۔ معائنہ کے وقت دن بھر کا گند پڑا ہوا تھا اور من مسائل مذکورہ جگہ کا صفائی شروع کرنے والا تھا اور ابھی کے بعد مسائل نے صفائی کر دی تھی۔ اسلئے آپ صاحبان سے التماس ہے کہ مسائل کو معاف فرمایا جا کر مشکور فرمائیں نوازش ہوگی مسائل تاعمر دعا گو رہے گا۔ اور آئندہ کیلئے محتاط رہے گا۔

Recommended 10/3/14

العبد

العارض

آصیا نامہ از قتل حیات حکام ویب عدالت ہذا

Attested by 24/7/014

ATTESTED
Examiner Writing Deptt: Session Court Swat

(31) Attested Annexure "I"

No. 654 /D&SJ Dated Swabi the 31 / 03 /2014

From F-41

District &Sessions Judge,
Swabi

To

Mr. Fazal Hayat
Sweeper

Subject: **FINAL SHOW CAUSE NOTICE**

Memo,

WHEREAS, you have persistently shown negligence, rather refused to carry out your duties during the past eight months;

WHEREAS, you have been served with several notices with warning from time to time reminding you of your duties but you have paid no heed to explanations No. 5517 dated 19.08.2013, 5543 dated 24.08.2013, 5911 dated 23.10.2013, 6747 dated 05.12.2013 which is a proof of the above fact;

WHEREAS, in view of your failure to clean the area assigned to you, the Judicial Officers have also complained against your conduct. In this respect complaint dated 05.12.2013 received from the court of learned Additional District & Sessions Judge-III is relevant;

WHEREAS, I have personally talked to you on several occasions and advised you to be vigilant, but in vain;

WHEREAS, the area assigned to you has always remained littered with debris and dirt which was also shown to you from time to time, but instead of doing your duty, you were always found sitting idle here and there;

WHEREAS, due to above, the drains were found filled with mud & choked but you did not clear it despite specific reminders due to which construction of gutters & manholes had to be undertaken giving un-necessary loss to public ex-chequer;

WHEREAS, you were asked to file reply to explanation/notice dated 25.02.2014, within 05 days which, after numerous verbal reminders, was reluctantly submitted after 15 days which gives a fair idea of how disrespectful and disobedient you are;

Attested by 24/7/2014

ATTESTED
Examiner Copying Deptt.
Sessions Court Swabi
9/4

(32)

WHEREAS, you were also found absent from duty on 24-08-2013 without application and were dully warned in writing vide No. 5543 dated 24-08-2013;

WHEREAS, on the basis of my own knowledge and on the strength of evidence brought on record during the past 7/8 months, you are proved be inefficient and guilty of gross misconduct and thus have reason to dispense with inquiry;

AND WHEREAS, in view of above, the undersigned, as competent authority, has decided to impose major penalty of removal from service on you;

NOW WHEREAS, you are finally directed to show cause as to why the above major penalty may not be imposed upon you.

Your reply should reach this office within *03 days* failing which it will be presumed that you have no defense to make.

You may also like to have personal hearing before the undersigned.

(AYMON ZIA)
District & Sessions Judge,
Swabi

Attested by
24/2/014

ATTESTED
9/4/14
Examiner Civil Court Depti:
Sessions Judge Swabi

ANNEXURE "J"

بخدمت جناب ڈسٹرکٹ ایڈمنسٹریشن صاحب صوابی

درخواست - برائے طلبی

During 15 minutes of personal hearing he said nothing except that "it will not happen again." Sadly he has been saying this for the last eight months. He must give way to more hardworking and deserving candidates. His track record is so poor, it does'nt afford any reason to me to give a second thought; Office to do the needful. 2.4.14.

ASJ-IV و ASJ-III جناب سیشن جج صاحب

بھی صفائی پر مامور رہے۔

سائل سے مورخہ 31/3/14 کو دائر شدہ درخواست طلبی کی

گئی تھی جس کے تعمیل میں سائل آئندہ کے لئے محتاط

رہنے کی استدعا کرتا ہے۔

لہذا آپ حضرات سے گزارش کی جاتی ہے کہ سائل کو معاف

فرما کر آئندہ کے لئے اپنی فرائض انجام دینے کا موقع

فراہم کریں۔ سائل تاحیات دعا گو رہے گا۔

درخواست گزار

01/04/14

آپکا تابع فرمان فضل حیات خاکروب ایڈمنسٹریشن ہذا

ATTESTED

Examiner Civil Court Dept.
Sessions Court Swabi

(34) ANNEXURE "K"

OFFICE ORDER
08.04.2014

WHEREAS, Mr. Fazal Hayat has been served with several notices and warnings from time to time reminding from duties but he paid no heed to explanations No. 5517 dated 19.08.2013, 5543 dated 24.08.2013, 5911 dated 23.10.2013, 6747 dated 05.12.2013 which is a proof of his negligence and inefficiency.

WHEREAS, in view of his failure to clean the area assigned to him, the Judicial Officers have also complained against his conduct. In this respect complaint dated 05.12.2013 received from the court of learned Additional District & Sessions Judge-III is relevant;

WHEREAS, I have personally talked to him on several occasions and advised him to be vigilant, but in vain;

WHEREAS, the area assigned to him has always remained littered with debris and dirt which was also shown to him from time to time, but instead of doing his duty, he was always found sitting idle here and there;

WHEREAS, due to above, the drains were found filled with mud & choked but he did not clear it despite specific reminders due to which construction of gutters & manholes had to be undertaken giving un-necessary loss to public ex-chequer;

WHEREAS, he was asked to file reply to explanation/notice dated 25.02.2014, within 05 days which, after numerous verbal reminders, was reluctantly submitted after 15 days which gives a fair idea of how disrespectful and disobedient he is;

WHEREAS, he was also found absent from duty on 24-08-2013 without application and was dully warned in writing vide No. 5543 dated 24-08-2013;

AND WHEREAS, in view of above, he is proved to be most in efficient and is guilty of misconduct. There is enough documentary evidence and material to support the above facts. Therefore there is no need to hold an inquiry.

NOW THEREFORE, in exercising of the powers under section-3 clause (a) & clause (b) of the N-W.F.P Removal from services (Special Powers) Ordinance, 2000 (an amended from time to time) he is hereby removed from service with immediate effect.

District & Sessions Judge,
Swabi

Endst: 728-30(F-53)/D&SJ Dated Swabi the 08/04/2014.

Copies to:

1. The Registrar, Peshawar High Court, Peshawar
2. District Accounts Officer, Swabi
3. Official concerned
4. Office

District & Sessions Judge,
Swabi

Attested
24/7/04

D:\D. My Document\APO to DSJ\Office files\41\Fazal Hayat\OFFICE ORDER.docx

To,

The Registrar/ Administrative Judge,
Peshawar High Court, Province of
Khyber Pakhtunkhwa Peshawar.

THROUGH PROPER CHANNEL.

DEPARTMENTAL REPRESENTATION / APPEAL AGAINST THE ORDER PASSED BY DISTRICT & SESSIONS JUDGE DATED 08-04-2014.

Prayer:

On acceptance of the present Representation / Appeal, the applicant may kindly be re-instated and order of release of salary may be graciously passed.

Respectfully Sheweth,

Facts leading to the filing of present Representation / Appeal are as following:

1. That the Applicant was initially appointed as Sweeper (BPS-02) by Senior Civil Judge, Swabi on temporary basis

upon recommendation of Departmental Selection Committee (DSC) on 29-01-2008.

(Copy of Office Order dated 29-01-2008 is annexed as "A")

2. That on completion of one year probation period the Applicant's service was regularized and was performing his duty with full diligence, hard work and with honesty.

3. That on 24-11-2010 through office order No.714-737 the Hon'ble Senior Civil Judge assigned duties to the Applicant alongwith other judicial staff and Zone (B) was allocated to him which included Hon'ble Additional Session Judge 1 to 4 offices, wash rooms, stairs, and garden including the Court rooms.

(Copy of the Office Order dated 24-11-2010 is annexed as "B")

4. That the applicant was performing his duty whole heartedly and was present on each and every date during office timing. His attendance was regularly registered in the Daily Attendance Register.

(Copy of Attendance Register is annexed as "C")

5. That on 19-08-2013 the Hon'ble District & Sessions Judge, Swabi issued an explanation latter to applicant vide its office order No.5517/D&SJ in which it was mentioned that you are frequently absent from your duty. The applicant submitted his reply within the prescribed time on 22-08-2013. The District & Session Judge issued a

warning latter No.5636/D&SJ dated 11-09-2013 which is re-produce below.

(Reference your explanation in response to latter bearing Endst; No.5517 dated 19-08-2013, the same is not satisfactory. You are hereby warned to be careful in future).

(Copy of the Letter are annexed as D, D1, D2)

6. That on 24-08-2013 once again an explanation was called from the Applicant through letter No.5543/D&SJ by the Hon'ble District and Sessions Judge in which the reason was shown that you were absent from your duty. The Applicant submitted his written reply before the Hon'ble District and Session Judge.

(Copy of the Letters are annexed as "E" & "E1" Respectively)

7. That on 23-01-2013 a report was submitted by Riaz Ahmad Reader / Assistant to Additional Sessions Judge-III, Swabi in which it was alleged that the Applicant was absent from his duty for the last three (03) days due to which cleanliness position of the premises is not done. In pursuance to the said report of reader of the court of Additional District Sessions Judge-III, swabi and explanation letter No.5911/D&SJ dated 23-10-2013 was issued to the applicant. The applicant submitted written reply to the said explanation on 28-10-2013 consequent upon this a warning letter No.5927/D&SJ dated 29-10-2013 was issued to the applicant.

(Copy of letters are annexed as "F", "F1", & "F2" respectively)

8. That it is pertinent to mentioned on the same day dated 23-10-2013 the Reader of Hon'ble Additional District and Sessions Judge-II, Swabi submitted a report regarding applicant in which he stated that he was present. It is wroth mentioning that the report of the said reader regarding applicant presence and his dutifulness was not consider in his favour.

(Copy of the Report is annexed as "G")

9. That on 05-12-2013 Reader of Additional District and Sessions Judge III, Swabi submitted report against Applicant of his absence. Consequent upon the report of reader of the same court explanation was called to which the applicant submitted written reply.

(Copy of the Report dated 05-12-2013 is annexed as "H")

10. That on 25-02-2014 once again an explanation was called upon from the applicant by District and Sessions Judge vide Letter No.367/D&SJ to which the applicant submitted written reply on 10-03-2014.

(Copy of explanation is annexed as "I")

11. That on 31-03-2014 vide letter No.654/D&SJ issued a Final Show Cause Notice to the Applicant and a written reply was submitted by the applicant on 01-04-2014.

(Copy is annexed as "J" & "K")

12. That on 08-04-2014 and office order was issued in which the applicant was removed from the service with

immediate effect under section-3 clause (a) & (b) of the N.W.F.P removal from service (Special Powers) Ordinance, 2000. It is pertinent to mentioned the time of his removal and initiating proceedings.

(Copy of Office Order dated 08-04-2014 is annexed as "L")

13. That it worth mentioning that the applicant was removed in a hasty manner and with malicious intent because not inquiry was initiated against him neither Senior Civil Judge establishment was informed as the applicant comes in the domain of Senior Civil Judge establishment.

14. That the basic requirement of issuing charge sheet has also not been issued to the applicant resultantly amounts to malafide removal of the petitioner.

15. That propriety, fair play and justice demands that Applicant removal order may kindly be set aside and also his salary may graciously be released.

In wake of the above submissions, it is very humbly prayed that the applicant may kindly be re-instated and an order of released of salary may graciously be passed.

Yours Humbly

Dated:-16-04-2014

FAZAL HAYAT S/o Jamshed Khan Akhounzada R/o Sherdara , Post office Parmoli, District Swabi, Tehsil Raazar.
(Sweeper in Distirct Court in Swabi)
(Now removed)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.976/2014

Fazal Hayat.....Vs..... 1. Registrar Peshawar High, Court, Peshawar,
2. District & Sessions Judge, Swabi
3. Senior Civil Judge, Swabi

Subject: **APPLICATION FOR ADJOURNMENT ON BEHALF OF RESPONDENTS:**

Respectfully Sheweth:

1. That the subject service appeal is pending before the Hon'ble Khyber Pakhtunkhwa Service Tribunal for today for submission of written reply on behalf of the respondents.
2. That the written reply on behalf of the respondents is duly vetted by the learned Additional Advocate General (Service Tribunal) Khyber Pukhtunkhwa, Peshawar vide diary No.6088 dated 02.03.2015.
3. That the said written reply is under process for finalization.
4. That the written reply will be submitted before this Hon'ble Tribunal on the next date positively.

It is, therefore, humbly prayed that the titled case/service appeal may kindly be adjourned, please.

Respondents through representative:

Laiq Khan
C.O.C/Superintendent
Senior Civil Judge, Swabi

AUTHORITY LETTER

Mr. Laiq Khan clerk of courts attached to the court of undersigned is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal in connection with service appeal No. 976/2014 titled Fazal Hayat Vs The Registrar Peshawar High Court, Peshawar & other on 06-04-2015.

Senior Civil Judge,
Swabi

AUTHORITY LETTER

Mr. Gohar Muhammad Sajjad Superintendent attached to the court of undersigned is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal in connection with service appeal No. 976/2014 titled Fazal Hayat Vs The Registrar Peshawar High Court, Peshawar & otherson 06-04-2015.

District & Sessions Judge,
Swabi

(1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.976/2014

Fazal Hayat Ex.Sweeper ..... **(Appellant)**

.....V E R S U S.....

1. The Registrar/Administrative Judge, Peshawar High Court, Peshawar
2. District & Sessions Judge, Swabi
3. Senior Civil Judge, Swabi ..... **(Respondents)**

WRITTEN REPLY ON BEHALF OF RESPONDENTS IN THE TITLED CASE

PRELIMINARY OBJECTIONS:

i. That the appellant has got no cause of action/locus standi to bring the present appeal.

ii. That the instant appeal is badly time barred.

iii. That the appellant concealed material facts from the Hon'able Tribunal hence, liable to be dismissed.

iv. That the appellant has not approached to the Hon'ble Tribunal with clean hands.

v. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

vi. That the present appeal is against the prevailing law and rules.

vii. That the Hon'able Tribunal has got no jurisdiction to entertain the present appeal.

viii. That the instant appeal is liable to be dismissed under Order-VII Rule-11 CPC.

ix. That the appeal is bad in its present form hence, not maintainable and liable to be dismissed with cost.

REPLY ON FACTS:

1. Para No. 1 is correct to the extent that the appellant was appointed on 04.02.2008 as sweeper in BPS-2 on temporary basis.

2. Para No.2 is against the law and facts hence, denied. Appellant was not interested in his official duties and was always remained absent from duty without prior permission from the competent authority. Ultimately, the competent authority had no option but to remove him from service.

3. Para No.3 is correct to the extent that the Senior Civil Judge Swabi assigned duty roster to the appellant but he had badly failed to perform duties assigned to him. Moreover, he was under observation due to his poor performance and absence from duty. He was found absent many times during working hours. The record speaks for itself that he was time and again warned but had no positive effect. The removal order passed by the competent authority was not the result of an isolated incident but after providing several opportunities to the appellant to mend his ways. The area assigned to him was always found filthy and even Judges complained against him in writing. The competent authority always himself visited the area and reminded him of his duty but he totally ignored it. Moreover, the competent authority pointed out blocked drains and directed the appellant to open the same but he did not complied with. The competent authority himself done that job by using spade. That was most serious because the stagnant water was

causing damage to the foundation of the building. Previous bad performance reports are attached as annexure "A" (consisting of 12 sheets).

(9)

4. Para No.4 is against the law and facts hence, denied. The appellant was legally bound to be present on each and every day in the premises of the judicial complex Swabi but he was always found absent. That practice of the appellant was personally realized by the competent authority. Time and again he was verbally and through black and white directed to mend his ways but he did not paid any heed to the directions and the same negative attitude was ended in the removal of his service.

5. Para No.5 is correct to the extent that the District and Sessions Judge Swabi called explanation on 19-08-2013 from the appellant. In response to the said explanation the appellant submitted reply which was not based on sound footings and cogent reasons which could justify his willful absence and the competent authority has issued warning notice to him.

6. Para No.6 is correct to the extent that competent authority has extended his lenient behavior to the appellant but he willfully ignored sympathetic attitude of the competent authority and again on 24-08-2013 explanation was called from him due to his absence and disinterest in his duty.

7. Para No.7 is correct to the extent that again he was given an explanation dated 23-10-2013 by the competent authority and he submitted reply to the said explanation which was found baseless and finally once again a warning notice was served upon the appellant. Repot submitted by the Reader of the Court of ASJ-III Swabi also reveals that the appellant was not performing his duty and remained absent from the last couple of days.

8. Para No.8 is against the facts hence, denied because the report of the Reader of Additional Sessions Judge-II Swabi is only upto the extent of cleanliness of the area attached to his court. All the documents mentioned in the appeal and produced by the appellant did not support the stance of appellant rather these documents shown his lack of interest and unlawful absence from duty.

9. Para No.9 is correct to the extent that Reader of the court of Additional Sessions Judge-III, Swabi submitted report against the appellant regarding his willful absence and poor performance.

10. Para No.10 is also correct to the extent that on 25.02.2014 the competent authority has called his explanation regarding non-attending to his duty and lack of interest with the directions to explain his position within five days but he reluctantly submitted reply after thirteen days, which showed a fair idea of his disrespectfulness and negligence (copy of the same is attached as annexure "B" consisting of 02-sheets).

(21)

The appellant was a disobedient official and he did not pay any heed to the directions of the competent authority and resultantly the

competent authority had no option but to remove him from service. He was polluting the whole atmosphere and in case if no action was taken against him it would have sent negative signals to all the employees serving in the District Judiciary Swabi.

11. Para No.11 is correct to the extent that the competent authority issued a final show cause notice to the appellant on 31-03-2014 in response to which he submitted reply which was baseless and groundless therefore, after giving personal hearing opportunity, the competent authority came to the conclusion of his removal from service.

12. Para No.12 is correct hence, needs no comments.

13. Para No.13 is correct to the extent that the removal order of the appellant was passed by the competent authority and he had submitted departmental appeal/representation against the said lawful order and now came to this Hon'ble Tribunal for reddressal through a meritless and groundless appeal which is liable to be dismissed with cost.

Reply on Grounds:

A. Para No.A is against facts and law hence, denied. The removal order dated 08-04-2014 of the appellant has been passed by the competent authority in accordance with law. The appellant himself admitted that time and again he was warned and different explanations were called from him, mentioned by the appellant in the instant appeal but his performance remained poor, therefore, the competent authority has left no option but to remove him from service.

B. Para No.B is against facts and law hence, denied. The record (explanations and reports regarding willful absence from duty) speaks for itself that he was not taking any interest in his duty and resultantly he was removed from service.

C. Para No.C is against facts and law hence, denied. All the sweepers were working diligently except the present appellant and not taking action (removal from service) against him would have sent negative signals to all the other employees. He does not deserve to be re-instated and by re-instating him into service the whole environment of the Judicial Complex at Swabi will be polluted.

D. Para No. D is against facts and law hence, denied. The appellant has been removed form service in accordance with law and all the codal formalities were fulfilled.

Therefore, it is, humbly prayed that the appeal filed by the appellant being devoid of merit and may kindly be dismissed with special cost.

District & Sessions Judge, Swabi
(Respondent No.02)

Senior Civil Judge, Swabi
(Respondent No.03)

(7)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.976/2014

Fazal Hayat Ex.Sweeper ..... (Appellant)

.....V E R S U S.....

1. The Registrar/Administrative Judge, Peshawar High Court, Peshawar
2. District & Sessions Judge, Swabi
3. Senior Civil Judge, Swabi ..... (Respondents)

A F F I D A V I T

We, the respondents No.2 and 3 do hereby affirm and declare that the contents of the parawise comments in the above noted service appeal are true to the best of our knowledge and nothing have been concealed from this Hon'ble Tribunal.

District & Sessions Judge, Swabi
(Respondent No.02)

Senior Civil Judge, Swabi
(Respondent No.03)

(8)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT, PESHAWAR

Fazal Hayat.....Vs.....District & Sessions Judge, Swabi etc

{ WRITTEN REPLY OF THE APPLICATION FOR SUSPENSION OF THE OPERATON OF ORDER ON 08-04-2014 }

1. Para No.1 of the petition is legal hence, needs no reply.
2. Para No.2 the objections/grounds taken in reply to the main appeal may graciously be considered as integral part of this reply.
3. Para No.3 is against law and facts hence, denied.
4. Para No.4 is also against facts and law hence, denied.
5. Para No.5 is against facts and law hence, denied. The operation of the lawful order dated 08-04-2014 can not be suspended under the law. The appellant was habitual absentee and was not interested in performance of his duty hence, deserves no leniency to be re-instated till final decision of the instant appeal. By re-instating him into the service the whole atmosphere will be polluted and it will also leave wrong impression on the minds of his other colleagues (Sweepers).

It is, therefore, humbly prayed that the instant application for suspension of the lawful order dated 08-04-2014 may kindly be dismissed with special cost.

District & Sessions Judge, Swabi
(Respondent No.02)

Senior Civil Judge, Swabi
(Respondent No.03)

(9)

9
18-1-2011

From:

District & Sessions Judge,
Swabi.

Notice to:

Fazal Hayat,
Sweeper

F-41

No 84 (F-41) **/D&SJ Dated Swabi the** 18 - 01 **/2011**

Subject: **SHOW CAUSE NOTICE.**

موصول شد

Memo:

On receipt of frequent complaints regarding your performance and as you seem not to be serious towards your duties and whereas a series of counseling and warnings to mend your behavour give no positive results, you are, therefore, required to show cause as to why your services should not be dispensed with.

Submit your reply within three days. In case of failure, it would be deemed as if you have nothing to offer in defence.

(Sharif Ahmad)
District & Sessions Judge,
Swabi.

District & Sessions Judge
SWABI

Office:

To put up service record of the official alongwith his reply, on receipt.

Attested to be true copy.

SUPERINTENDENT
District & Sessions Judge
Swabi

(70)

(1)

بحضور جناب ڈسٹرکٹ اینڈ سیشن جج صاحب صوابی

جناب عالی!

جواب طلبی مسمی سائل حسب ذیل عرض ہے۔ 9 / 18.1.11

1۔ یہ کہ مسمی سائل متعلق حیات عدالت حضور میں بحیثیت Sweeper ڈیوٹی سرانجام دے رہا ہوں۔

2۔ یہ کہ مسمی سائل کو عدالت حضور سے بحوالہ رجسٹر نمبر (F.G) 84 مورخہ 19/1/11 کو SHOW CAUSE NOTICE بابت ناقص کارکردگی ملا ہے۔

3۔ یہ کہ مسمی سائل کو عدالت حضور نے جاری عدالت ہائے کی صفائی کی ذمہ داری سونپی ہے جبکہ Closing hour کے بعد مسمی سائل بالترتیب عدالت ہائے کی صفائی کا کام بخوبی سرانجام دینے کی کوشش کرتا ہوں۔ Found not Satisfactory

4۔ یہ کہ ایک عدالت کی صفائی پر کم از کم ایک یا ڈیڑھ گھنٹہ لگتا ہے۔ Hereafter, care fully give Detail Character in letter # of 26/1

5۔ یہ کہ مسمی سائل کا تعلق ضلع صوابی کے ایک دور دراز علاقے شیر درہ سے ہے جہاں جانے کیلئے گاڑی کا کوئی خاص انتظام موجود نہیں ہے جبکہ مسمی سائل ڈیوٹی سے واپس جانے کے بعد رات کو دیر سے اپنے گاؤں پہنچتا ہوں اور کم از کم دو گھنٹے پیدل سفر بھی کرتا ہوں

District & Sessions Judge SWABI 24/1/11

Attested to be true copy

SUPERINTENDENT
District & Sessions Judge
Swabi

(P.T.O)

4) یہ کہ حسن سائل کا تعلق ایک غریب گھرانے سے ہے اور حسن سائل اپنے خاندان کا واحد ذریعہ معاش ہوں

5) یہ کہ حسن سائل نے عدالت حضور کے کام میں کبھی بھی دانستہ طور پر سستی اور کاہلی سے کام نہیں لیا ہے جبکہ اپنی بھرپور کوشش کے باوجود بھی حسن سائل کمی، کوتاہی کا مرتکب ہوا ہوں۔

6) یہ کہ حسن سائل آئندہ کیلئے محتاط رہوں گا اور عدالت حضور کو کبھی بھی شکایت کا موقع نہیں دوں گا۔

7) یہ کہ حسن سائل کی غریبی، بے کسی اور لاچاری کو دیکھتے ہوئے حسن سائل کو معاف فرمایا جاوے۔

عین نوازش کرم ہوگی۔

العبد

آپ کا تابعدار حقیل حیات سوپرنٹنڈنٹ عدالت جناب ڈسٹرکٹ اینڈ سیشن جج صاحب صوابی

المرقوم:

Attested to be true copy 20/01/2011

SUPERINTENDENT
District & Sessions Judge
Swabi

(12)

1
24.1.2011

9
18.1.11

From:

The District & Sessions Judge,
Swabi.

Notice to,

Fazal Hayat,
Sweeper.

No 86(F-41) /D&SJ Dated Swabi the 24 /01/2011

Subject: **Final Show Cause Notice.**

Memo,

Your explanation submitted in response to this office # 84(F-41)/D&SJ dated 18.01.2011 being gone through and found not satisfactory in view of your performance, you are finally warrned to mend your ways.

Mr. Muhammad Hamid Mughal, AD&SJ-II, Swabi shall watch your performance and submit weekly report for 06 months, in view of which, your behaviour shall be assessed. In case of laxity, the notice already served upon you shall be deemed as final show cause notice and may result in your removal/dismissal from service.

(Sharif Ahmad)
District & Sessions Judge,
Swabi

OFFICE OF THE DISTRICT & SESSIONS JUDGE, SWABI

Copy to:

1. Additional District & Sessions Judge-II, Swabi to submit report in the above terms, regularly.

2. Superintendent shall pursue the process and report compliance consistently.

3. Personal file of the official.

District & Sessions Judge,
Swabi

Attested to be true copy

SUPERINTENDENT
District & Sessions Judge
Swabi

(13)

No. 113 Dated: 27/1/11

From

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

To,

The Learned District & Sessions Judge-IV,
Swabi

Subject: **ASSESSMENT OF PERFORMANCE OF FAZAL HAYAT SWEEPER**

Madam,

Enclosed please find herewith the copy of letter No. 86 (F-41) dated: 24/01/2011 of the learned District & Sessions Judge, Swabi. Since the above named court official has also been assigned the task of cleanliness of the court of your good self, along with the veranda and the rooms of officials attached with the court of your good self, it is therefore requested that the name of the above mentioned court official be enrolled in the attendance register of your court officials and in case of absence of the above mentioned court official from his duty or otherwise his performance is not found satisfactory, the undersigned may kindly be intimated to that effect.

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

Attested to be true copy
SUPERINTENDENT
District & Sessions Judge
Swabi

No. 115

Copy to:

The learned District & Sessions Judge, Swabi for information, please.

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

District & Sessions Judge
SWABI

(14)

No. 48 Dated 11/2/11

From

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

To,

The Learned District & Sessions Judge,
Swabi

Subject: **REPORT REGARDING PERFORMANCE OF MR. FAZAL HAYAT (SWEEPER)**

Respected Sir,

In reference to your good letter bearing endorsement No. 86 (F41) dated: 24/01/2011, the undersigned visited and inspected the premises assigned to the sweeper named above and his performance was not found up to the mark.

Submitted as desired please.

(Muhammad Hamid Mughal)
Addl: District & Sessions Judge-II,
Swabi

District & Sessions Judge
SWABI

Attested to be true copy.

SUPERINTENDENT
District & Sessions Judge
Swabi

(15)

No. 851 Dated: 10/03/2011

From

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

To,

The Learned District & Sessions Judge,
Swabi

Subject: **REPORT REGARDING PERFORMANCE OF MR. FAZAL HAYAT (SWEEPER)**

Respected Sir,

In reference to your good letter bearing endorsement No. 86 (F41) dated: 24/01/2011, today the undersigned along with the reader of this court visited and inspected the premises assigned to the sweeper and found it in highly deplorable condition, however, the sweeper concerned was found present and cleaning the same and he requested some time for complete washing and cleansing. Reader of this court also provided water pipe to the Sweeper concerned for proper cleansing. The Sweeper also stated that some of the messed up area is in the domain of the another Sweeper namely Eid-ur-Rehman, with whom the reader of this court also contacted on cell phone for clarification and doing the needful.

Submitted as desired please.

Attested to be true copy.
SUPERINTENDENT
District & Sessions Judge
Swabi

Seen.

12-3-11
District & Sessions Judge
SWABI

(Muhammad Hamid Mughal)
Addl: District & Sessions Judge-II,
District Swabi

(16)

No. 1063 Dated Swabi the, 29.03.2011

From:

Muhammad Hamid Mughal,
Addl:Distt & Sessions Judge-II,
Swabi.

To:

The Learned Distt & Sessions Judge,
Swabi.

Subject:- REPORT REGARDING PERFORMANCE OF MR. FAZAL HAYAT (SWEEPER).

Respected Sir,

In reference to your good self letter bearing endorsement No.86(F41):dated:24.01.2011, the undersigned today at about 03:00:pm visited and inspected the premises assigned to the Sweeper concerned and found the Sweeper working. The premises was not found in neat and tidy condition and he was directed to thoroughly wash the same.

Submitted as desired, please.

Yours' Obediently

(Muhammad Hamid Mughal)
Addl:Distt & Sessions Judge,
Swabi.

Attested to be true copy

SUPERINTENDENT
District & Sessions Judge
Swabi

Seen..

31-3-11

District & Sessions Judge
SWABI

(17)

No. 1204 Dated: 12/04/2011

From

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

To,

The Learned District & Sessions Judge,
Swabi

Subject: **REPORT REGARDING PERFORMANCE OF MR. FAZAL HAYAT (SWEEPER)**

Respected Sir,

In reference to your good self letter bearing endorsement No. 86 (F41) dated: 24/01/2011, it is submitted that the performance of the Sweeper concerned was not found satisfactory during this week.

Submitted as desired please.

Your's obediently

(Muhammad Hamid Mughal)
Addl: District & Sessions Judge-II,
District Swabi

Attested to be true copy.

SUPERINTENDENT
District & Sessions Judge
Swabi

Seen.
14-4-11

District & Sessions Judge
SWABI

(18)

No. 1247 Dated: 18/04/2011

From

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

To,

The Learned District & Sessions Judge,
Swabi

Subject: **REPORT REGARDING PERFORMANCE OF MR. FAZAL HAYAT (SWEEPER)**

Respected Sir,

In reference to your good self letter bearing endorsement No. 86 (F41) dated: 24/01/2011, it is submitted that the performance of the Sweeper concerned was not found up to mark during this week.

Submitted as desired please.

Your's obediently

(Muhammad Hamid Mughal)
Addl: District & Sessions Judge-II,
District Swabi

Attested to be true copy.

SUPERINTENDENT
District & Sessions Judge
Swabi

(19)

No. 2203 Dated: 20.06.2011

From

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

To,

The Learned District & Sessions Judge,
Swabi

Subject: **REPORT REGARDING PERFORMANCE OF MR. FAZAL HAYAT (SWEEPER)**

Respected Sir,

In reference to your good self letter bearing endorsement No. 86 (F41) dated: 24/01/2011, it is submitted that the performance of the Sweeper concerned was found not satisfactory during this week.

Submitted as desired please.

Your's obediently

(Muhammad Hamid Mughal)
Addl: District & Sessions Judge-II,
District Swabi

Attested to be true copy.

SUPERINTENDENT
District & Sessions Judge
Swabi

(20)

No. 2288 Dated: 27.06.2011

From

Muhammad Hamid Mughal
Addl; District & Sessions Judge-II,
Swabi

To,

The Learned District & Sessions Judge,
Swabi

Subject: **REPORT REGARDING PERFORMANCE OF MR. FAZAL HAYAT (SWEEPER)**

Respected Sir,

In reference to your good self letter bearing endorsement No. 86 (F41) dated: 24/01/2011, it is submitted that the performance of the Sweeper concerned was found not satisfactory during this week.

Submitted as desired please.

Your's obediently

(Muhammad Hamid Mughal)
Addl: District & Sessions Judge-II,
District Swabi

Attested to be true copy.

SUPERINTENDENT
District & Sessions Judge
Swabi

(21)

No. 367 /D&SJ (F40) Dated Swabi the 25 /02/2014

From:

District & Sessions Judge,
Swabi

To:

Fazal Hayat
Sweeper
Sessions Courts, Swabi

Subject: EXPLANATION

Memo,

During visit of the Judicial Complex Shamansoor Swabi today on 24.02.2014, cleanliness of the area allocated to you was found littered with rubbish. In the past too you were called upon to explain this kind of negligence and were warned to be careful but it appears that you are deliberately not attending to your duties. You have time and again repeated this kind of behavior which shows that you have completely lost interest in your work and are thus no more fit to be retained in service. The record of this office is a proof of the above facts.

You are once again directed to explain your such negligence within 05 days of the receipt of this letter.

25/2/14

(AYMON ZIA)
District & Session Judge,
Swabi

Attested to be true copy

SUPERINTENDENT
District & Sessions Judge
Swabi

بخدمت جناب ڈسٹرکٹ اینڈ سیشن جج صاحب ضلع سوابی

عنوان! جواب طلبی

جناب عالی!

درخواست گزارش کی جاتی ہے کہ سائل سے مورخہ 25/3/14 کو

جواب طلبی کیگئی تھی۔

یہ کہ سائل ایک غریب گھرانے سے تعلق رکھتا ہے اور

سائل باقاعدہ روزانہ صبح ڈیوٹی کیلئے آتا ہے اور پھر سے

گھر واپس جاتا ہے۔

یہ کہ آپ صاحبان نے عدالتوں کا معائنہ کیا تھا۔ معائنہ

کے وقت دن بھر گند پڑا ہوا تھا اور سائل مذکورہ

جگہ کا صفائی شروع کرنے والا تھا اور تھوڑی کے بعد سائل

نے صفائی کر دی تھی۔ اسلئے آپ صاحبان سے

التماس ہے کہ سائل کو معاف فرما کر شکور فرمایں

نوازش ہوگی سائل تاعمر دعا گو رہے گا۔ اور آئندہ کیلئے

محتاط رہے گا۔

الراقم

العارض

آصیا ناصر ولد مقبل حیات خاکروب ملازم ہذا

Remarks
10/3/14
District & Sessions Judge
Swabi

Attested to be true copy
SUPERINTENDENT
District & Sessions Judge
Swabi

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 976/2014

Fazal Hayat Versus Registrar & Others

REPLICATION

Respectfully Sheweth,

PRELIMINARY OBJECTION.

All the 9 preliminary objections of respondents are illegal and incorrect. No reason in support of the same is ever given as to why the appellant has got no cause of action/locus standi, the appeal is badly time barred, appellant has concealed material facts, he has not approached to the Tribunal with clean hands, appeal is bad for mis and non joinder of necessary parties, the same is against prevailing law and rules, Hon'ble Tribunal has no jurisdiction, appeal is liable to dismissed under O-VII, R-II of CPC and is bad in form/not maintainable.

ON FACTS

1. Admitted correct by the respondents.

2. Not correct. The para is not replied to the contents of the para of appeal.

3. Admitted correct by the respondents due to duty roster. As far as rest of the para is concerned, no date is given of absence of appellant. Removal order from service is not mandated by law as no statement of any witness(s) was recorded nor appellant was afforded opportunity of cross examination, so the impugned order is of no legal effect, being under repeal law.

4. Not correct. In this para too, no date of absence of appellant from service was given. He always performed his duties well within time as and when assigned to him.

5. As above.

6. In response to the para of the comments, it is submitted that the authority had made it her routine issue to call for explanation of appellant. The attendance register is the ample proof regarding presence of appellant and performance of his duties.

7. Not correct. Appellant submitted application for 3 days leave as his uncle was died on the said date. As far as report of the reader was concerned, the same was negated in para 8 of the appeal annex "G" that appellant was present on duty.

8. As above.

9. Not correct. The sitting A.D.J was not in normal terms with the late Judge of High Court namely Akhunzada Shahjehan Khan, so appellant was made escape goat.

10. As above.

11. In response to the para of the comments, it is submitted that final show cause is legally issued when enquiry is completed and the same is annexed with final show cause. From this para, it is quite evident that appellant was not dealt with as per the mandate of law regarding major punishment of removal from service.

12. Admitted correct by the respondents. It is further submitted that order of removal from service dated 08.04.2014 is of no legal effect and is ab-initio void as the law under which appellant was dealt with, has since been repealed in the year 2011, so the impugned order is null and void in the eyes of law. On this score alone, appellant is legally entitled to be reinstated in service with all back benefits.

13. As above. The para of the appeal is correct.

GROUNDS:

a. Not correct. And as stated above in para No. 12, order dated 08.04.2014 is not only illegal but the same is ab-initio void.

b. Not correct. The matter against appellant was not dealt with as per the mandate of law. No enquiry was conducted against him. Moreso, absence nowhere constitute misconduct and no one can

be removed from service on this score. The punishment is very harsh and does not commensurate with the matter.

c. Not correct. The impugned order is without lawful authority, is of no legal effect and legally is ab-initio, null and void.

d. Not correct. The ground of the appeal is correct. The para of the comments is without proof, regarding completion of codal formalities.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

Appellant

Through

Akhunzada Asad Iqbal

Dated: .05.2015 &

Arbab Saif Ul Kamal
Advocates,

AFFIDAVIT

I, Fazal Hayat S/o jamshaid, Appellant do hereby solemnly affirm and declare that contents of the **Appeal** & **rejoinder** are true and correct to the best of my knowledge and belief and that of the reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

DEPONENT

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT
18/5/15

WAKALATNAMA

(Power of Attorney)

Before the KPK Services Tribunal, Peshawar

...Fazal Hayat.....(Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

VERSUS

...Administrative Judge.....(Respondents)
Peshawar High Court & others Defendant)
(Accused)
(Judgment Debtor)

I, the undersigned (Petitioner) in the above noted civil do hereby appoint and constitute ***Malik Muhammad Ajmal Khan*** Advocate, to appear, plead, act, compromise, withdraw or refer to arbitration for me/ us as my/ our Counsel in the above noted matter, without any liability for that default and wit the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

CLIENT

Malik Muhammad Ajmal Khan
Advocate High Court
Off: 10/C, Haroon Mansion
Khyber Bazar Peshawar.
Cell: 0301-8866939

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 976/2014

Fazal Hayat (Ex-Sweeper) District Judiciary, Swabi.....Appellant

Versus

1. **The Registrar/Administrative Judge, Peshawar High Court Peshawar.**

2. **District & Sessions Judge, Swabi.**

3. **Senior Civil Judge, Swabi .....Respondents**

Comments on behalf of Respondent No.1

PRELIMINARY OBJECTIONS:

i. That the appellant has got no cause of action/ locus standi to bring the present appeal.

ii. That the instant appeal is badly time barred

iii. That the appellant concealed material facts from this Hon'ble Tribunal hence liable to be dismissed.

iv. That the appellant has not approached the Hon'ble Tribunal with clean hands.

v. That the Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.

vi. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed with cost.

vii. That the present appeal is against the law and rules.

ON FACTS

1. Para No.1 is correct to the extent that the appellant was appointed on 4/2/2008 as a sweeper on temporary basis.

2. Para No.2 is against the law and facts, hence denied. Appellant was not interested in his official duties and always remained absent from duty without prior permission from the competent authority. Ultimately, the competent authority had no option but to remove him from service.

3. Para No.3 is correct to the extent that the senior Civil judge, Swabi assigned duty roster to the appellant but he badly failed to perform duties assigned to him.

4. Para No.4 is against the law and facts hence, denied.

5. Para No.5 is correct to the extent that the District & Sessions Judge, Swabi called explanation on 19/8/2013 from the appellant. In response to the said explanation the appellant submitted reply which was found unsatisfactory, so the competent authority issued a warning Notice to him.

6. Para No.6 is correct to the extent that competent authority extended his leniency to the appellant but he willfully ignored lenient attitude of the competent authority and again on 24/8/2013 explanation was called from him due to his absence and disinterest in his duty.

7. Para No.7 is correct to the extent that again he was given an explanation on 23/10/2013 by the competent authority and he submitted reply to the said explanation which was found baseless and finally once again a warning notice was served upon the appellant. Report submitted by reader of the Court of ASJ III, Swabi also revealed that the appellant was not performing his duty and remained absent for a number of days.

8. Para No.8 is against the facts hence denied because the report of the reader of ASJ II, Swabi is only upto the extent of cleanliness of the area attached to his Court. All the documents mentioned in the appeal did not support the stance of the appellant rather these documents show his lack of interest and unlawful absence from duty.

9. Para No.9 is correct to the extent that reader of the Court of ASJ III, Swabi submitted a report against the appellant regarding his willful absence and poor performance.

10. Para No.10 is also correct to the extent that on 20/2/2014 the competent authority had called his explanation regarding non attendance and lack of interest with the directions to explain his position within five days but he reluctantly submitted reply after thirteen days, which showed a fair idea of his disrespectfulness and negligence. The appellant was a disobedient official and he did not pay any heed to the directions of the competent authority and resultantly the competent authority had no option but to remove him from service.

11. Para No.11 is correct to the extent that the competent authority issued a final show cause Notice to the appellant on 31.03.2014, in response to which he submitted reply which was baseless and groundless therefore, after giving personal hearing opportunity, the competent authority issued the removal from service order.

12. Para No.12 is correct hence, needs no comments.

13. Para No. 13 is correct to the extent that the removal order of the appellant was passed by the competent authority and against that he submitted Departmental appeal/representation was withdrawn on 22.06.2015 by the Hon'ble Puisne judge. The appellant has now approached the Hon'ble Tribunal for redressal through a meritless and groundless appeal which is liable to be dismissed with cost.

REPLY ON GROUNDS.

A. Para No. A is against facts and law, hence denied. The removal order dated 08.04.2014 of the appellant has been passed by the competent authority in accordance with law. The appellant himself admitted that time and again he was warned and numerous explanations were called from him, so mentioned by the appellant in the instant appeal but his performance remained poor, therefore, the competent authority was left with no option but to remove him from service.

B. Para No B is against facts and law, hence denied. The record (Explanations and report regarding willful absence from duty) speaks for itself that he was not taking any interest in his duty and resultantly he was removed from service.

C. Para No. C is against the law and facts, hence denied. All the Sweepers were working diligently except the present appellant .The appellant does not deserve to be reinstated.

D. Para No. D is against facts and law, hence denied. Appellant was removed from service in accordance with law after fulfillment of the codal formalities.

It is, therefore, humbly prayed that the appeal file by the appellant being devoid of merit and may graciously be dismissed with special cost.

Dated:
September, 17th, 2015

Respondent No. 1
Registrar,
Peshawar High Court,
Peshawar

AFFIDAVIT

I, Azhar Khan Acting Registrar, Peshawar High Court Peshawar, do hereby solemnly affirm and declare that contents of the Comments are correct to the best of my knowledge and belief.

Registrar,
Peshawar High Court,
Peshawar

Dated:
September, 17th, 2015

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2744 /ST Dated 26 /12/2017

To

The District & Session Judge,
Government of Khyber Pahtunkhwa,
Swabi.

Subject: **JUDGEMENT/ ORDER IN APPEAL NO. 976/14, MR.FAZAL HAYAT.**

I am directed to forward herewith a certified copy of Judgment/order dated 14/12/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

O/C