

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	27.06.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 16/2016</p> <p style="text-align: center;">Date of Institution ... 05.01.2016 Date of Decision ... 27.06.2018</p> <p style="text-align: center;">Syed Umar Shah son of Farooq Shah resident of Mohallah Gohati Pul Koroonah Tehsil & District Swabi.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. Deputy Commissioner, Swabi District Swabi. 2. Commissioner Mardan Division Mardan. 3. District Accounts Officer Swabi. 4. Mr. Afsar Ali Shah Assistant Commissioner Swabi (Inquiry Officer). 5. Government of Khyber Pakhtunkhwa through Chief Secretary at Peshawar. 6. Government of Khyber Pakhtunkhwa through Secretary Board of Revenue at Peshawar. <p style="text-align: right;">Respondents</p> <p>Muhammad Arif Jan Advocate-----For Appellant</p> <p>Kabir Ullah Khattak Additional Advocate General-----For Respondents</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p><u>MUHAMMAD HAMID MUGHAL, MEMBER: -</u> Learned counsel for the appellant and Mr. Kabir Ullah Khattak, Additional Advocate General for the respondents present.</p> <p>2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated</p>

13.07.2015 of respondent No.1 whereby he was removed from service and against the order dated 05.10.2015 of respondent No.2 vide which the departmental appeal of the appellant was dismissed.

3. Learned counsel for the appellant argued that in the year 2012 the appellant was appointed as Naib Qasid in the department of respondent No.1; that vide order dated 11.03.2015 the appellant was suspended on account of absence and inefficiency. That vide order dated 31.07.2015 of respondent No.1 the appellant was removed from service and then the departmental appeal of the appellant against his removal order also failed. Learned counsel for the appellant argued that the major penalty of removal from service was imposed upon the appellant without issuance of charge sheet/statement of allegation, and any regular inquiry and no show cause notice was issued to the appellant. Learned counsel for the appellant vehemently stressed that the impugned orders are not tenable in the eyes of law hence the appellant is entitled to be reinstated in service.

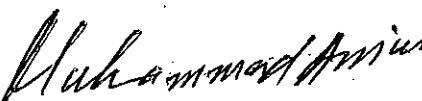
4. As against that learned Additional Advocate General while opposing the present service appeal argued that the punishment was awarded to the appellant after the completion of codal formalities and that the appellant was rightly removed from service on the ground of willful absence from duty and inefficiency in discharging of official duties.

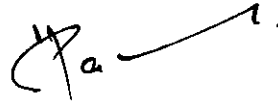
5. Arguments heard. File perused.

6. The appellant in his departmental appeal has also taken the

stance that all the proceedings were initiated, conducted and concluded against him at his back because he was behind the bar during the proceedings.

7. Main thrust of arguments on behalf of learned counsel for the appellant was that the appellant was condemned without observing the codal formalities and legal requirements. Perusal of file reflects that neither the charge sheet/statement of allegation, report of inquiry and show cause notice were found appended with the reply of the respondents nor the respondents department could produce the copies of the same during the course of arguments. In this backdrop the contention of the learned counsel for the appellant, to the effect that major penalty was awarded to the appellant without observing codal formalities and without adhering to the legal requirements, has a force in it. Consequently the present service appeal is accepted in terms that the impugned orders are set aside and the appellant is reinstated in service. Intervening period shall be treated as extraordinary leave without pay. The respondent department is however at liberty to conduct denovo proceedings against the appellant in accordance with law/rules. Parties are left to bear their own costs. File be consigned to the record room after its completion.


(Muhammad Amin Kundi)
MEMBER

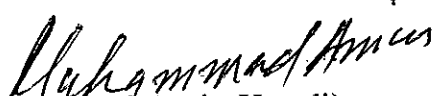

(Muhammad Hamid Mughal)
MEMBER

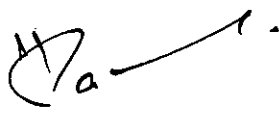
ANNOUNCED
27.06.2018

27.06.2018

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak, learned Additional Advocate General for the respondents present.

Vide separate judgment of today of this Tribunal placed on file, the present service appeal is accepted in terms that the impugned orders are set aside and the appellant is reinstated in service. Intervening period shall be treated as extraordinary leave without pay. The respondent department is however at liberty to conduct denovo proceedings against the appellant in accordance with law/rules. Parties are left to bear their own costs. File be consigned to the record room after its completion.



(Muhammad Amin Kundi)
MEMBER



(Muhammad Hamid Mughal)
MEMBER

ANNOUNCED
27.06.2018

05.12.2017

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Rejoinder not submitted. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for rejoinder and arguments on 08.02.2018 before D.B.

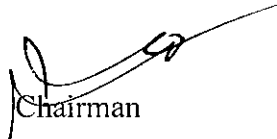

(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

08.02.2018

Appellant with counsel and Mr. Ziaullah, DDA for the respondents present. Counsel for the appellant seeks adjournment. Granted. To come up for rejoinder and arguments on 12.04.2018 before the D.B.


Member


Chairman

12.04.2018

Appellant in person and Mr. Zia Ullah, learned Deputy District Attorney for the respondents present. Appellant requested for adjournment as his counsel is not available. Adjourn. To come up for arguments on 26.06.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

26.06.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Arguments heard. To come up for order on 27.06.2018 before D.B.

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

16/2016

06.12.2016 Appellant in person and Mr. Muhammad Jan, GP for the respondents present. Rejoinder not submitted. Appellant requested for time for failing of rejoinder. Request accepted. To come up for rejoinder and arguments on 11.4.17 before D.B.



(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

11.04.2017

Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG for respondents also present. Rejoinder not submitted. Appellant requested for adjournment on the ground that his counsel is not available. Adjourned. To come up for rejoinder and arguments on 03.08.2017 before D.B.

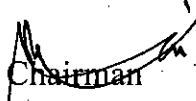

(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

03.08.2017

Appellant in person and Asst. AG for the respondents present. Appellant seeks adjournment. Adjourned. To come up for rejoinder and arguments on 05.12.2017 before D.B.


Member


Chairman

02.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Naib Qasid in the office of DC Swabi when subjected to inquiry on the allegations of wilful absence and inefficiency and removed from service vide impugned order dated 31.7.2015 where-against he preferred departmental appeal which was rejected on 5.10.2015 but communicated to the appellant on 23.12.2015 and hence the instant service appeal on 5.1.2016.

Appellant Deposited
Security Process Fee


That neither any formal inquiry was conducted nor opportunity of hearing was afforded to appellant and that the appellant had never remained absent from duty.

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 11.5.2016 before S.B.


Chairman

11.05.2016

Appellant in person and Mr. Nisar Ahmed, Assistant alongwith Addl: AG for respondents present. Learned Addl: AG informed that reply is under process and will be submitted on the next date. Requested for further time. Request is accepted. To come up for written reply/comments on 8.9.2016 before S.B.


Member

08.09.2016





Appellant in person M/S Bakhtiar Ali, Assistant and Mesri Khan, Senior Auditor alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 06.12.2016.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 16/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05.01.2016	<p>The appeal of Syed Umar Shah presented today by Mr. Muhammad Arif Jan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	5-1-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-1-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	28.01.2016	<p>Counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 24.2.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	24.02.2016	<p>Appellant in person present. Seeks adjournment. Adjourned for preliminary hearing to 2.3.2016 before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No. 16/2016

Syed Umar Shah.....Appellant

VERSUS

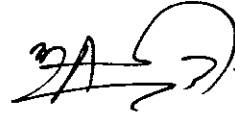
Deputy Commissioner Swabi and othersRespondents

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memo of Petition		1-6
2.	Affidavit		7
3.	Addresses of Parties		8
4.	Copy of appointment order	A	9
5.	Copy of suspension order	B	10
6.	Copy of letter dated 31-3-2015	C	11
7.	Copy of order dated 31-07-2015	D	12
8.	Copies of memo of appeal and order dated 5-10-2015	E & F	13-16
9.	Copy of letter dated 3-06-2015	G	17
10.	Wakalat Nama		

Appellant

Through



Muhammad Arif Jan

Advocate, Peshawar

Office: Office No.210 Al-Mumtaz Hotel

G.T. Road Peshawar:

Cell: 0333-2212213

Date: 5 / 11 / 2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 16 /2016

K.W.P. Province
Service Tribunal

Diary No. 10

Dated 05/11/2016

Syed Umar Shah S/o Farooq Shah R/o Mohallah Gohati Pul
Koroona Tehsil and District Swabi.....Appellant

VERSUS

1. Deputy Commissioner, Swabi District Swabi
2. Commissioner Mardan Division Mardan.
3. District Accounts Officer Swabi.
4. Mr. Afsar Ali Shah Assistant Commissioner Swabi
(Inquiry Officer).
5. Govt of Khyber Paktunkhwa through Chief Secretary at
Peshawar.
6. Govt of Khyber Paktunkhwa through Secretary Board of
Revenue at Peshawar.....Respondents.

Filed to-day
5/11/16

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 5-
10-2015 PASSED BY RESPONDNET NO 2 WHEREBY HE MAINTAINED

THE ORDER DATED 31-07-2015 OF RESPONDENT NO-1 IN RESPECT OF REMOVAL FROM SERVICE OF THE APPELLAT.

PRAYER IN APPEAL:

On acceptance of the instant appeal the impugned orders dated 5-10-2015 and 31-7-2015 passed by respondents No-1 & 2 respectively may graciously be set-aside and the appellant may kindly be re-instated in his service with all back benefits.

Respectfully Sheweth:

1. That the appellant was appointed as Naib Qasid in BPS Olvide order No-239-43 dated 15-2-2012, and was posted in the office of respondent No-1. (Copy of appointment order is attached as Annex-A).
2. That the appellant served the department for his full devotion, determination and to the entire satisfaction of his superiors.
3. That the appellant was suspended with immediate effect on account of inefficiency and willful absentee vide order dated 11-03-2015. (Copy of order dated 11-03-2015 is attached as ANNEX-B).

4. That on 31-3-2015 the respondent No-4 was appointed as inquiry Officer who recommended the appellant for imposition of Major Penalty. (Copy of letter dated 31-3-2015 is attached as ANNEX_C).
5. That the respondent No-1 removed the appellant from his service vide order dated 31-07-2015. (Copy of order dated 31-7-2-15 is attached as ANNEX_D).
6. That the appellant being aggrieved preferred department appeal before respondent No-2 which was too dismissed on 5-10-2015. (Copies of appeal and order dated 5-10-2015 is attached as ANNEX_E & F).
7. That then the appellant filed an application on 5-10-2015 for obtaining the certified copies of the order dated 5-10-2015 which were delivered on 23-12-2015, hence the appellant being aggrieved and having no other remedy except to approach this Hon'ble Tribunal on the following amongst other grounds.

GROUND:

- A. That the orders dated 5-10-2015 and 31-7-2015 of respondents No-1 & 2 respectively (herein after impugned) are patently illegal, unlawful, without lawful authority, of no legal effect hence having no value in the eyes of Law thus be set-aside and the appellant may kindly reinstated with all back benefits according the policies of the Government.
- B. That neither the appellant found absented from his duties nor any inefficiency established from the available record against the appellant and the awarding of Major Penalty of removal from service is nothing but smell / shows personal grudges of Respondent No-1 and 4.
- C. That the finding of both the competent Officer ie Respondents No-1 & 2 are silent regarding the period of absentee of the appellant and similarly also silent regarding the inefficiency on part of appellant hence needs consideration of this Hon'bel Tribunal against the acts, omission and commission of the respondents.
- D. That the respondents are badly failed to follow the existing rules and regulations regarding the subject matter as no proper inquiry has been conducted in proper manner against the appellant.

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- E. That no show cause notice issued to the appellant moreover no any personal hearing opportunity, no charge sheet etc has been given to the appellant.
- F. That astonishingly the appellant name was also placed by the respondent No-1 in the DPC for promotion which clearly shows good efficiency of the appellant. (Copy of letter dated 3-6-2015 is attached as ANNEX- G).
- G. That the respondents also ignored the volume of service of the appellant while awarding the major penalty which is against law and principle of natural justice.
- H. That there is no livelihood of the appellant and he is the only bread winner of his whole family and now he has become over aged and is not in a position to apply for any other posts due to the acts of respondents.
- I. That the respondents were/ is duty bound to follow the Law, Rules and Regulations governing the subject matter but in the present case they badly fail to follow or adopted the existing policy hence the present appeal.
- J. That any other grounds which have not been mention may also be permitted to raise at the time of arguments.

(6)

It is, therefore, most humbly prayed that On acceptance of the instant appeal the impugned orders dated 5-10-2015 and 31-7-2015 passed by respondents No-1 & 2 respectively may graciously be set-aside and the appellant may kindly be re-instated in his service with all back benefits.

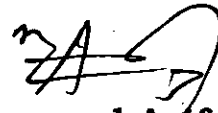
That any other relief which has not been specifically asked for and is fit in the circumstances may also be allowed in favour of appellant against respondents.



Appellant

Through

Dated: 5/11/2016



Muhammad Arif Jan
Advocate, Peshawar.



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

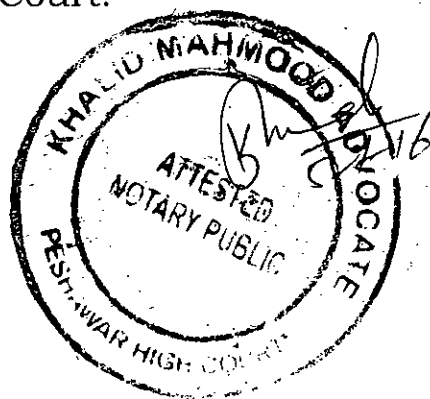
Syed Umar Shah.....Appellant

VERSUS

Deputy Commissioner Swabi and others.....Respondents

AFFIDAVIT

I Syed Umar Shah S/o Farooq Shah R/o Mohallah Gohati Pul Koroonah Tehsil and District Swabi do hereby solemnly affirm and declare that the contents of the **appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



S. Umar Shah
DEPONENT

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Syed Umar Shah.....Appellant

VERSUS

Deputy Commissioner Swabi and others Respondents

ADDRESSES OF PARTIES

APPELLANT:

Syed Umar Shah S/o Farooq Shah R/o Mohallah Gohati Pul
Koroona Tehsil and District Swabi

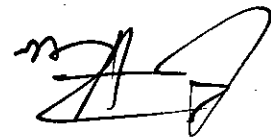
RESPONDENTS

1. Deputy Commissioner, Swabi District Swabi
2. Commissioner Mardan Division Mardan.
3. District Accounts Officer Swabi.
4. Mr. Afsar Ali Shah Assistant Commissioner Swabi
(Inquiry Officer).
5. Govt of Khyber Paktunkhwa through Chief Secretary at
Peshawar.
6. Govt of Khyber Paktunkhwa through Secretary Board of
Revenue at Peshawar

Appellant

Through

Date: / /2016



Muhammad Arif Jan
Advocate, Peshawar.

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Aux A

4

OFFICE ORDER.

On the recommendation of the Departmental Selection Committee during its meeting held on 10.02.2012, Mr. Sayyad Umar Shah S/o Farooq Shah R/o Mohallah Gohati Pul Koroona, Gohati Tehsil & District Swabi, is hereby appointed as Naib Qasid BPS-01, purely on temporary basis with the following terms and conditions:-

1. That he will provide Medical Fitness Certificate from the Medical Superintendent DHO Hospital Swabi.
2. That his service will be purely on temporary basis.
3. He will not be entitled to pension and gratuity. However, he will be entitled to CP Fund.
4. He will assume the charge with in 15 days from the date of issuance of this order.
5. All relevant service rules currently in practice or as amended by the Government of Khyber Pakhtunkhwa from time to time will be applicable on him.

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[Signature]
Assistant Coordination Officer,
Swabi.

OFFICE OF THE DISTRICT COORDINATION OFFICER SWABI

No. 239-43 /DCO(S)EA/Misc

Dated. 15 /02/2012

Copy forwarded to the:-

1. Commissioner Mardan Division Mardan.
2. PS to District Coordination Officer, Swabi.
3. District Accounts Officer, Swabi.
4. Medical Superintendent DHO Hospital, Swabi.
5. Official concerned for compliance.

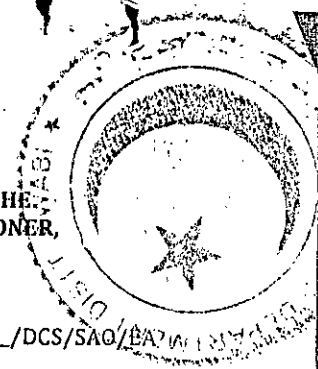
[Signature]
Assistant Coordination Officer,
Swabi.

CTC
[Signature]

Umer Shah
14



A.C / Swabi (10)
Annex-B



OFFICE OF THE
DEPUTY COMMISSIONER,
SWABI

No. 737 /DCS/SAG/BAW/15
Dated 11 /Mar: 2015

SUSPENSION ORDER

The services of Mr. Said Umer Shah, Naib Qasid of Deputy Commissioner establishment Swabi is hereby suspended with immediate effect on account of inefficiency displayed in the discharge of official duties and willful absence from duty.

Mr. Afsar Ali Shah, Assistant Commissioner, Swabi is hereby appointed as Inquiry Officer to probe into the allegations leveled against the delinquent official and submit his findings within (7) days alongwith considered views and recommendations accordingly.

(Signature)

(Matiullah Khan, PAS)
Deputy Commissioner
Swabi

EVEN NO: & DATE:

- 1- DAO Swabi.
- 2- ADC Swabi.
- ✓ 3- Assistant Commissioner, Swabi
- 4- Assistant Commissioner, Lahor
- 5- Official concerned.

(Signature)

(Matiullah Khan, PAS)
Deputy Commissioner
Swabi

(Large handwritten signature)

EXEMPTED TO BE TRUE COPY
(Signature)
Copying Department Swabi

CTC

(Signature)

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03229097446



A-e/Swabi

11

Annex - C

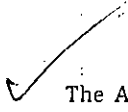
OFFICE OF THE
DEPUTY COMMISSIONER
SWABI

REMINDER

No. 932 /DCS/SAO/EA

Dated 31 /Mar: 2015

To:



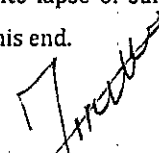
The Assistant Commissioner,
Swabi (Inquiry Officer)

Subject: SUSPENSION OF ONE SAID UMER SHAH NAIR QASID - INQUIRY

Memo:

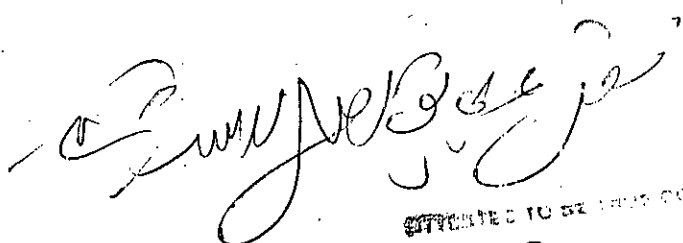
Please refer to this office order No. 737/DCS/SAO/EA dated 11th March, 2015 wherein the services of the subject official were suspended and you were appointed as Inquiry Officer to probe into the allegations levelled against him and submit/findings with your considered recommendations within (7) days.

The requisite inquiry report is still awaited from your end despite lapse of sufficient time. Please expedite the same and intimate factual position for further action at this end.


(Matiullah Khan, PAS)
Deputy Commissioner
Swabi

Copy to:

- 1- ADC Swabi.
- 2- Superintendent Admn:

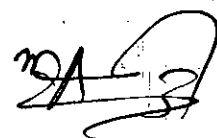


ATTACHED TO BE KEPT COPY

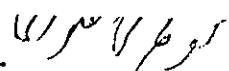


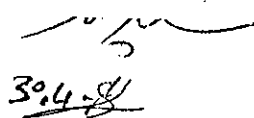
Office of the Deputy Commissioner
Swabi

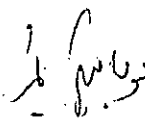
CTC








30.4.15

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Annex - D

OFFICE OF THE DEPUTY COMMISSIONER SWABI.

NOTIFICATION.

Dated 31/07/2015

No. 21031/DCs/13EA/ Whereas, Mr. Said Umar Shah, Naib Qasid (BPS-01) of Deputy Commissioner Establishment, Swabi was proceeded against under the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011, on account of his willful absence from duty and inefficiency in the discharge of official duties.

AND WHEREAS, to conduct inquiry against accused Naib Qasid, Mr. Afsar Ali Shah Assistant Commissioner, Swabi was appointed as inquiry Officer.

AND WHEREAS, the inquiry Officer, after having examined the charges, evidence on record and explanation of the official submitted his report wherein he recommended that "major penalty be imposed upon him".

AND WHEREAS, the competent Authority also accorded the opportunity of personal hearing to the official concerned.

NOW THEREFORE, the competent authority, after having considered the charges, evidence on record, report of inquiry officer, the explanation of the official, defense offered by the official during the personal hearing and exercising his powers under Rule-14 and 4b(II) of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) 2011, hereby imposes major penalty of "Removal from Service" on Mr. Said Umar Shah, Naib Qasid (BPS-01) with immediate effect.

(Matiullah Khan)
DEPUTY COMMISSIONER SWABI.

Endst. No & date even.

1. All the Commissioners, Khyber Pakhtunkhwa.
2. The PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
4. The Director Information, Khyber Pakhtunkhwa, Peshawar.
5. All the Deputy Commissioners, Khyber Pakhtunkhwa.
6. All the District Accounts Officers, Khyber Pakhtunkhwa.
7. The Assistant Commissioner, Swabi/Lahor.
8. The Accountant local office.
- ✓ 9. Mr. Said Umar Shah S/o Syed Nooran Shah R/o Gohati Tehsil & District Swabi.

(Matiullah Khan)
DEPUTY COMMISSIONER, SWABI.

CTL
[Signature]

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Before The Commissioner Mardan Division Mardan

Annex - 'E'

Syed Umar Shah Ex- Naib Qasid ((BPS-1) office of D.C Swabi.
.....Appellant

VERSUS

D.C. Swabi as inquiry officerRespondent

Appeal against the order of respondent No.1 dated 31/07/2015, whereby, appellant is removed from service, which is illegal, against law and facts.

Respectfully Sheweth:

1. That appellant was appointed as Naib Qasid (BPS-1) vide order dated 15/02/2012.(Copy of the order is attached as Annex: "A").
2. That appellant has served with entire satisfaction of his superior and there is no complaint against appellant. (Copy of service book is attached as Annex: "B").
3. That appellant filed an application for transfer from the post of Cook/Driver/Watchman with the Assistant Commissioner Lahore namely Irshad Khan to his parent post i.e Naib qasid office of D.C Swabi. (Copy of the application is attached as Annex: "C").
4. That due to filing of application of appellant and demand of his legal right for transfer of his post, appellant was suspended and charged vide order dated 11/03/2015. (Copy of the order dated 11/03/2015 is hereby attached as Annex: "D").
5. That A.C Swabi was appointed as inquiry officer for conducting of finding inquiry vide order dated 31/03/2015. (Copy of order is attached "E").

See Page no. 2
3

23/12/15

2

- 6. That appellant has properly reply of the case and explained his position vide application dated 30/04/2015. (Copy of the same is hereby attached as Annex: "F").
- 7. That without conducting of inquiry proceeding and without any charge, appellant is removed from service vide order dated 31/07/2015. (Copy of the order is attached as Annex: "G").
- 8. That neither any inquiry has been conducting against appellant nor any show cause notice has been served upon the appellant nor any personal hearing has been given to the appellant nor any inquiry proceeding copy has been given to the appellant.
- 9. That order of respondent no.1 dated 31/07/2015 is illegal, against the law and facts on the following grounds:-

GROUNDS:-

- A. That absence of petitioner is not willful but in fact he was on duty in the Lahore of A.C Irshad.
- B. That order of the responded dated 31/07/2015 is illegal, against the law, facts and without lawful authority, hence not tenable and liable to be set aside.
- C. That neither show cause notice nor charge sheet along with statement of allegation nor opportunity of personal hearing has been given tot the petitioner, only this grounds order of responded No:3 dated 31/07/2015 is liable to be set aside.
- D. That no any regular inquiry has been conducted nor opportunity of cross examination has been given to the petitioner, which mandatory as per E&D Rule.
- E. That petitioner has got 04 years unblemished record of service at his credit.
- F. That all the proceedings initiated , conducted and concluded are illegal, against the law, facts, without lawful authority, unauthorized officer and at the back of the petitioner because petitioner was behind the bar during conducting of proceedings, hence order of respondent is not tenable and liable to be set aide.

See Page no
23

ATTESTED

[Signature]

Examiner/Reader to
Commissioner Court
Mardan Division, Mardan

23/12/015

23/12/015

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It is, therefore, humbly prayed that on acceptance of this appeal orders of respondents against petitioner dated 31/07/2015 may please be set aside and petitioner may please be re-instated in service with back service benefits. Any other relief deemed fit may also be graciously awarded.

Dated

Appellant S. U. B.

Through Yacob Khan
Yacob Khan Advocate
High Court at Distt: Courts
Mardan

AFFIDAVIT

That the contents of the appeal are true and corret to the best of my knowledge and belief.

~~M. AKBA MOTI ADVOCATE
Distt: Courts
Mardan~~
6/2015

Deponent S. U. B.

~~M. AKBA MOTI ADVOCATE
Distt: Courts
Mardan~~

No. 587
Date of Application 05/10/015
Name of Applicant S. U. B.
Wards 1200 Fee 1200
Urgent Fee
Sign of Copyist S. U. B.
Date of Preparation 23/12/015

ATTESTED
[Signature]
Examiner/Reader to
Commissioner Court
Mardan Division Mardan
23/12/015

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IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

Syed Umer Shah Naib Qasid Applicant
 Versus

Deputy Commissioner/District Collector Swabi Respondent

Case No.....
 Dated of institution: 06/08/2015
 Dated of Decision: 05/10/2015

ORDER:-

Brief facts of the case are that the appellant was appointed as Naib Qasid in BPS-1 in the office of Deputy Commissioner Swabi vide order dated 15/02/2012. On 31/07/2015, the appellant was removed from service vide order No.2103/DCS/13 EA dated 31/07/2015 by Deputy Commissioner Swabi. Aggrieved with the order dated 31/07/2015 of Deputy Commissioner Swabi, the appellant made the instant appeal.

Appellant with his counsel present. Mr. Bakhtyar, Assistant form the Department side present and submitted parawise comments placed on file.

Argument of the learned counsel for the appellant heard. Record perused.

Counsel for the appellant argued that no enquiry has been conducted by the competent authority nor any show cause notice has been severed upon the appellant. Further argued that no any chance has been given to the appellant for personal hearing and the impugned order of respondent No.1 is illegal against the law and facts and prayed for acceptance of the appeal.

From the perusal of record shows that proper inquiry has been conducted by the Assistant Commissioner Swabi and he recommended major penalty be imposed upon the appellant. Further more, the appellant was removed from service on account of inefficiency displayed in the discharge of official duties and willful absence from official duties. No illegality or miscarriage of justice has been committed by him. Therefore, the appeal in hand is hereby dismissed. No order as to costs.

Announced.
 05/10/2015

No. 589
 Date of Application 05/10/015
 Name of Applicant
 Wards 400 Fee 40
 Urgent Fee
 Sig. of Copyist
 Date of Preparation 23/12/015

Commissioner
 Mardan Division, Mardan



ATTESTED

Signature of Examiner/Recorder to Commissioner Court Mardan Division, Mardan
 23/12/015

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Amx-G

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OFFICE OF THE
DEPUTY COMMISSIONER SWABI

No. 1624 /DC(S)/EA.
Dated 03 /06/2015

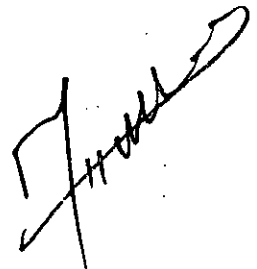
To Mr, Syed Umar Shah
NCO DC office Swabi
All Concerned

Subject: DEPARTMENTAL PROMOTION COMMITTEE MEETING

Memo:

The DPC Meeting on account of Promotion of Naib Qasid ^{class-IV} to the post of Junior Clerk BPS-11 was held on 10.04.2015 in the office of the undersigned but the same was postponed on an objection raised by one of the members of the committee to the effect that the promotion may be made on seniority cum fitness basis.


You are hereby directed to attend the office of the undersigned on 11-06-2015 at 11.00AM for typing test/interview, so as to proceed further in the matter.

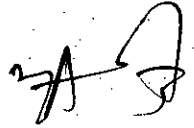

Deputy Commissioner,
Swabi.

Even date

Commissioner Mardan Division, Mardan with the request to nominate a one to attend the office for conducting the test/interview on the date mentioned above.

Deputy Commissioner swabi


Deputy Commissioner,
Swabi

CFC


WAKALATNAMA

Appeal No. 16/2016

IN The Honble Khyber Pakhtunkhwa Service Tribunal
Post →

Syed Ameer Shah

(Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Decree Holder)

V E R S U S

DC Swabi

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

Case Svc - Appeal

I/We, Syed Ameer Shah do hereby appoint and constitute **Muhammad Arif Jan Advocate** High Court, Peshawar, to appear. Plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

CLIENT/S



Muhammad Arif Jan
Advocate, High Court, Peshawar.
Office No. 6, 1st Floor
Pabbi Medical Centre, G.T. Road
Peshawar.
Mobile: 0333-2212213

S. Ameer
(Syed Ameer Shah)
Appellant

BEFORE THE KHYBER PAKHTUN KHWA SERVICES TRIBUNAL, PESHAWAR

Syed Umer Shah S/O Farooq shah R/o Mohallah Gohati Pul Koroona Tehsil & District swabi

VERSUS

1. Deputy Commissioner, Swabi
2. Commissioner Mardan Division, mardan
3. District Accounts officer Swabi
4. Mr. Afsar Ali Shah Assistant Commissioner Swabi (Inquiry Officer)
5. Govt of Khyber Pakhtun Khwa through Chief Secretary Peshawar
6. Govt of Khyber Pakhtun Khwa Secretary Board of Revenue at Peshawar

Subject: **APPEAL UNDER SECTION 4 OF KHYBER PAKHTUN KHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 05.10.2015 PASSED BY THE RESPONDENT NO.02 WHERE BY HE MAINTAINED THE ORDER DATED 31.07.2015 OF THE RESPONDENT NO.01 IN RESPECT OF REMOVAL FROM SERVICE OF THE APPELANT.**

Respectfully Sheweth:

In compliance with the Hon'ble Service Tribunal Khyber Pakhtun Khwa Peshawar order, this office submits the following reply on behalf of respondent No. 03:

- Para 1: Relates to Respondent No.01
Para 2: Relates to Respondent No.01
Para 3: Relates to Respondent No.01
Para 4: Relates to Respondent No.01 & 04
Para 5: Relates to Respondent No.01
Para 6: Relates to Respondent No.02
Para 7: Relates to Respondent No.01 & 02
~~Para 8: Correct~~
~~Para 9: Incorrect on the following grounds:~~

Grounds:

- A. Relates to Respondent No.01 & 02
- B. Relates to Respondent No.01,02 & 04
- C. Relates to Respondent No.01,02
- D. Relates to Respondent No.01,02
- E. Relates to Respondent No.01,02
- F. Relates to Respondent No.01,
- G. Relates to Respondent No.01,

Continued p-2

- H. Seems to be correct with reference to livelihood being a class-iv low paid Govt Servant .As regard the question of over age, it is submitted that service book is not available with this office.
- I. Relates to Respondent No.01,02.
- J. Relates to Appellant.

In view of above facts that this office will comply with the orders of the hon'ble court passed in positive / negative provided respondent No.01 & 02 implements the court judgement.


Mirza Ali Khan
District Accounts Officer, Swabi



5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Syed Umar Shah s/o Farooq Shah r/o Mohalla Gohati Pul Koroona Tehsil and District Swabi.....
Appellant

Versus

1. Deputy Commissioner Swabi.
2. Commissioner Mardan Division Mardan.
3. District Accounts Officer Swabi.
4. Mr. Afsar Ali Shah Assistant Commissioner, Swabi (Inquiry Officer).
5. Govt of Khyber Pakhtunkhwa through Chief Secretary at Peshawar.
6. Govt of Khyber Pakhtunkhwa through Secretary Board of Revenue at Peshawar.

Respondent

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED. 05-10-2015 PASSED BY THE RESPONDENT NO.2 WHEREBY HE MAINTAINED THE ORDER DATED 31-07-2015 OF RESPONDENT NO.1 IN RESPECT OF REMOVAL FROM SERVICE OF THE APPELLANT.

PRAYER IN APPEAL.

ON ACCEPTANCE OF THE INSTANT APPEAL THE IMPUGNED ORDERS DATED. 05-10-2015 AND 31-07-2015 PASSED BY THE RESPONDENT NO.1 & 2 RESPECTIVELY MAY GRACIOUSLY BE SET- ASIDE AND THE APPELLANT MAY KINDLY BE RE- INSTATED IN SERVICE WITH ALL BACK BENEFITS.

REPLY/ WRITTEN COMMENTS OF BEHALF OF RESPONDENT NO.1,2,4,5 & 6.

PRELIMINARY OBJECTIONS.

1. *The appellant has no cause of action/ locus standi to file the present appeal.*
2. *The present appeal is badly time barred.*
3. *The appellant has concealed the material facts from this Honorable court hence liable to be dismissed.*
4. *The appellant has not come to Honorable Court with clean hands.*
5. *That the appeal is bad for mis joinder and no joinder of necessary parties.*
6. *That the present appeal is barred by law.*
7. *That the present appeal is bad in its present form hence not maintainable and liable to be rejected with special cost.*


FACTS.


1. Para No 1 is correct to the extent that the appellant was appointed as Naib Qasid (BPS-01) vide order dated. 15-02-2012.
2. Para No. 2 is incorrect. The service of the official was not satisfactory. Hence he was removed from service.
3. Para No. 3 is correct. That the appellant was suspended from duty on account of inefficiency and willful absence from duty vide order dated.11-03-2015.
4. Para No. 4 is correct to the extent that Respondent No.4, namely Afsar Ali Shah Assistant Commissioner Swabi was appointed an inquiry Officer in the case and he recommended/ imposed a major penalty, upon the appellant.
5. Para No. 5 is correct to the extent that on recommendation of the inquiry Officer, the appellant was removed from service vide order No. 2103/DCs/13-EA dated. 31-07-2015.
6. Para No.6 is correct that the appeal was dismissed by the Respondent No. 2.
7. Para No.7 -No Comments.

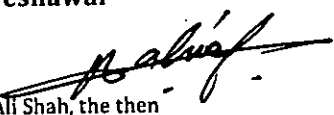
GROUNDS.

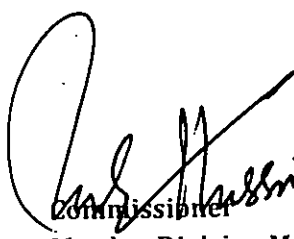
- A. Para No .A is incorrect. The removal order of the appellant is legal and lawful and he is not liable to be Re- instated in service.
- B. Para No. B is incorrect. The appellant willfully absented himself from duty hence major penalty was imposed and the appellant was removed from service.
- C. Para No. C is incorrect. The appellant was issued show cause notice but the appellant did not join his duty; he is inefficient in performance of his duty.
- D. Para No. D Is incorrect. Proper inquiry was conducted and on the report of inquiry Officer / following the existing rules/ regulations the appellant was removed from service.
- E. Para No. E is incorrect. The appellant was issued show cause notice and was personally heard by the Respondent No.1.
- F. Para No F is correct to the extent that the name of the appellant was placed for promotion to the post of Junior Clerk but due to disciplinary action against him, his case was not considered for promotion.
- G. Para No. G is incorrect. The appellant was awarded major penalty according to law.
- H. Para No. H- No comments.
- I. Para No. I is incorrect. The Respondents No. 1& 2 have followed the law, rules and regulation in the present case and no violation has been made.
- J. Para No. J -No comments.

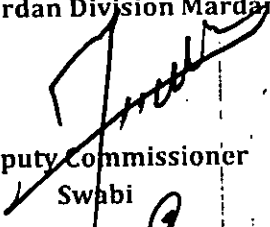
It is therefore humbly prayed that on acceptance of this reply the instant appeal filed by the appellant may graciously be dismissed with cost.


Chief Secretary
Govt: of Khyber Pakhtunkhwa, Peshawar


Secretary
Board of Revenue Govt: of Khyber Pakhtunkhwa,
Peshawar

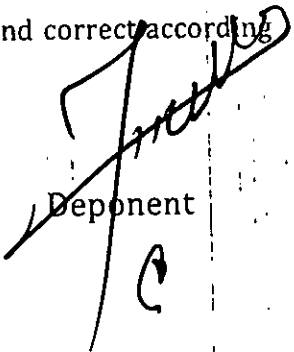

Mr. Afsar Ali Shah, the then
Assistant Commissioner
Swabi


Commissioner
Mardan Division Mardan


Deputy Commissioner
Swabi

CERTIFICATE.

Certified that all the contents of the reply are true and correct according to the knowledge and no facts have been concealed.


Deponent

5

3003/MS
11/5/16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Syed Umar Shah s/o Farooq Shah r/o Mohalla Gohati Pul Koroona Tehsil and District Swabi.....
Appellant

Versus

1. Deputy Commissioner Swabi.
2. Commissioner Mardan Division Mardan.
3. District Accounts Officer Swabi.
4. Mr. Afsar Ali Shah Assistant Commissioner, Swabi (Inquiry Officer).
5. Govt of Khyber Pakhtunkhwa through Chief Secretary at Peshawar.
6. Govt of Khyber Pakhtunkhwa through Secretary Board of Revenue at Peshawar.


Respondent

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED. 05-10-2015 PASSED BY THE RESPONDENT NO.2 WHEREBY HE MAINTAINED THE ORDER DATED 31-07-2015 OF RESPONDENT NO.1 IN RESPECT OF REMOVAL FROM SERVICE OF THE APPELLANT.

PRAYER IN APPEAL.

ON ACCEPTANCE OF THE INSTANT APPEAL THE IMPUGNED ORDERS DATED. 05-10-2015 AND 31-07-2015 PASSED BY THE RESPONDENT NO.1 & 2 RESPECTIVELY MAY GRACIOUSLY BE SET- ASIDE AND THE APPELLANT MAY KINDLY BE RE- INSTATED IN SERVICE WITH ALL BACK BENEFITS.

PRELIMINARY OBJECTIONS.

- 
1. The appellant has no cause of action/ locus standi to file the present appeal.
 2. The present appeal is badly time barred.
 3. The appellant has concealed the material facts from this Honorable court hence liable to be dismissed.
 4. The appellant has not come to Honorable Court with clean hands.
 5. That the appeal is bad for mis joinder and no joinder of necessary parties.
 6. That the present appeal is barred by law.
 7. That the present appeal is bad in its present form hence not maintainable and liable to be rejected with special cost.

FACTS.

1. Para No 1 is correct to the extent that the appellant was appointed as Naib Qasid (BPS-01) vide order dated. 15-02-2012.
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5. Para No. 5 is correct to the extent that on recommendation of the inquiry Officer, the appellant was removed from service vide order No. 2103/DCs/13-EA dated. 31-07-2015.

- 6. Para No.6 is correct that the appeal was dismissed by the Respondent No. 2.
- 7. Para No.7 - No Comments.

GROUNDS.

- A. Para No .A is incorrect. The removal order of the appellant is legal and lawful and he is not liable to be Re- instated in service. ✓
- B. Para No. B is incorrect. The appellant willfully absented himself from duty hence major penalty was imposed and the appellant was removed from service. ✓
- C. Para No. C is incorrect. The appellant was issued show cause notice but the appellant did not join his duty; he is inefficient in performance of his duty. ✓
- D. Para No. D Is incorrect. Proper inquiry was conducted and on the report of inquiry Officer / following the existing rules/ regulations the appellant was removed from service. ✓
- E. Para No. E is incorrect. The appellant was issued show cause notice and was personally heard by the Respondent No.1. ✓
- F. Para No F is correct to the extent that the name of the appellant was placed for promotion to the post of Junior Clerk but due to disciplinary action against him, his case was not considered for promotion. ✓
- G. Para No. G is incorrect. The appellant was awarded major penalty according to law.
- H. Para No. H- No comments.
- I. Para No. I is incorrect. The Respondents No. 1&.2 have followed the law, rules and regulation in the present case and no violation has been made. ✓
- J. Para No. J - No comments.

It is therefore humbly prayed that on acceptance of this reply the instant appeal filed by the appellant may graciously be dismissed with cost.

Handwritten notes:
 refer to connections subject
 Or share files vetted
 draft the Respondents
 in Order to submit a joint
 comments. Or des para need

DEPUTY COMMISSIONER
 SWABI

Addr: Advocate General
 (Service Tribunal) K.P.K
 Peshawar.

Handwritten notes:
 Or des submit
 attach the affidavit
 inquiry me on line
 11-5-16

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 1308 /ST

Dated 02 /07/2018


To

The Commissioner Mardan Division,
Govt: of Khyber Pakhtunkhwa,
Mardan.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 16/2016, MR. SYED UMAR
SHAH.**

I am directed to forward herewith a certified copy of Judgment/Order dated
27/06/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.



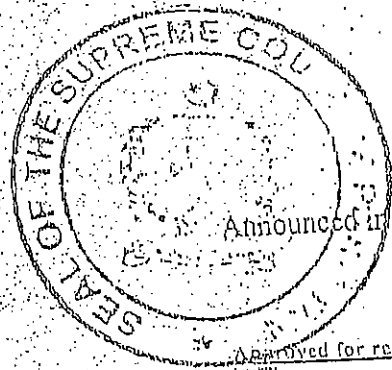
Government. It appears that the Appellants were not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed different persons in place of the Appellants. The case of the present Appellants is covered by the principles laid down by this Court in the case of Civil Appeals No.134-P of 2013 etc. (Government of KPK through Secretary, Agriculture vs. Adnanullah and others), as the Appellants were discriminated against and were also similarly placed project employees.

34
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7. We, for the aforesaid reasons, allow this Appeal and set aside the impugned judgment. The Appellants shall be reinstated in service from the date of their termination and are also held entitled to the back benefits for the period they have worked with the project or the KPK Government. The service of the Appellants for the intervening period i.e. from the date of their termination till the date of their reinstatement shall be computed towards their pensionary benefits.

Sd/- Anwar Zaheer Jamali, H.C.J
Sd/- Mian Saqib Nisar, J
Sd/- Amir Hani Muslim, J
Sd/- Iqbal Hameedur Rahman, J
Sd/- Khilji Arif Hussain, J

Certified to be True Copy



Announced in open Court on 30.5.16

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

J 11685/16

Approved for reporting.

30.5.16

CR No:	11685/16	Civil/Criminal
Date of Filing	6.6.16	
No of Words		
No of Pages		
Requester		
Copy Fee to		
Court Fee		
Date of	6-6-2016	
Date of	6-6-2016	

M. S. Khatun, AOR

ATTESTED

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